REPORT

OF THE

COMMISSIONERS

APPOINTED TO INQUIRE CONCERNING THE MODE OF APPOINTING AND REMUNERATING

CERTAIN PROVINCIAL OFFICERS

NOW PAID BY FEES

AND THE EXTENT OF THE REMUNERATION THEY SHOULD RECEIVE.

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PRINTED BY ORDER OF THE LEGISLATIVE ASSEMBLY.

TORONTO:
WARWICK BROS. & RUTTER, Printers, &c., 68 and 70 Front Street West.
1895.

COMMISSIONERS.

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Secretary.

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INDEX.

SUMMARY OF CONTENTS.

I.—Preliminary. PAGE.

Paragraph 1. Questions and letters sent 11
" 2. Meetings held and letters sent 11
" 3. Information gathered in the States 11
" 4. Results indicated 11
" 5-6. As to practice in other countries 11
" 7. Need for audit of municipal accounts 12
" 8. Table of officers' fees, etc., for 1894 12

II.—Part I. As to appointments.

Paragraph 1. Classification of offices in question 12
" 2. As to distribution of Governmental power 12
" 3. Officers are state officers 13
" 4-26. Historical retrospect and development of municipal government 13
" 27-30. The contrasted development in Michigan 17
" 31-38. Completion of municipal system in Ontario in advance of England 18
" 39. The W. L. McKenzie episode 20
" 41. The party system of patronage recognized 21
" 42. If patronage abused, remedy is not elective officers 21
" 43-49. American experience as to election and short tenure of office . 22
" 50. Question in hand restated 23
" 51-52. Election lessens executive responsibility and disintegrates the service, and citation of authorities 23
" 53. Reflex action of election belittling the executive 25
" 55-56. The elective system, popular control illusory 25
" 57. In such a system party lines still maintained 26
" 58. Professor Sidgwick's treatment of the question 26
" 59-61. Disadvantages of election and advantages of appointment 27
" 62-63. Appointment by county councils, how it would work 29
" 64. Corruption engendered by elections 30
" 65. Better choice by cabinet than by counties 30
" 66-67. Executive appointments obtain in the Federal Government of the United States 30
" 68. Reaction towards more centralization in the United States 31
" 69-71. John Stuart Mill's opinion 31
" 72-76. Details to be watched and systematized if there is a change made 32
" 77-78. How to secure the best service economically and otherwise ... 33

II.—Part I. As to appointments.—*Continued.* PAGE.

Paragraph 79-87. Objections dealt with, viz 34
" 80. Offices kept vacant for a purpose 34
" 81. Member of Legislature appointed 34
" 82. Recommendation of discredited candidates 34
" 83. Political partisanship of officeholders 35
" 84. A bureaucratic system 35
" 85. Let those who pay appoint 35
" 86. Reduction of expense by municipal control 35

III.—Part II. As to the particular offices.

Paragraph 1. Clerk of the Peace; in the States 36
" 2. In Ontario 37
" 3. In England 37
" 5. County Attorney, development of system of public prosecutors 38
" 6. Practice in the States 38
" 8. Sheriff, common duties and responsibility 39
" 10. Urban Sheriff in England 39
" 11. Practice in the States 39
" 12. In Ontario is a Dominion officer 40
" 13. Disadvantages of elective Sheriff 40
" 15 Registrars of deeds, universal in English colonies 41
" 16. Registration in England limited 41
" 17. In Ireland and Scotland 42
" 18. Chronology of office in Upper Canada 42
" 19. In Quebec and other Provinces 42
" 20. In the States of the Union 43
" 21-23. Properly a State officer 43
" 24. Inaccuracy resulting from office being elective 44
" 25-26. Suggestions as to the administration of the system in Ontario 44
" 28. Courts, their clerks and officers, interweaving of functions in Ontario 45
" 29-30. So in England and the States 45
" 31. In the national courts of the United States appointed by judges 45
" 32. And so in England and Ireland 46
" 33-34 Division Court; origin and development 46
" 35. Election of clerks of courts undesirable 47
" 36. Opinions of J. S. Mill 47
" 37. Elective system did not take root in Upper Canada 48
" 38-40. Distinctive system of local courts here 48
" 41. County courts 49
" 42. County courts in England 49
" 43. Peculiarity of the American legal system 50
" 44-50. License commissioners 51
Growth of system and comparison with other countries 51

IV.—Part III. As to fees. PAGE.

Paragraph 1. Fees not to be abolished 53
" 2-4. Payment of fees by suitors 53
" 5. Expense of criminal justice 53
" 6-7. Payment by salaries to judicial officers 53
" 8. Payment by fees to ministerial officers 54
" 9. Questions as to fees, etc., before the judges in 1845 54
" 10-11. Jeremy Bentham and Lord Brougham on the stimulus of fees 54
" 12-13. Practical evolution of fee system stated 55
" 14-15. State of the system in England 55
" 16-20. And in the United States 55
" 21. Summary by Prof. Goodnow 57
" 22. No abuse of the fee system in Ontario 58
" 23-24. Result is that expediency governs and better to let ministerial officers receive fees 58
" 25. Statutes showing progress of fee system in Upper Canada 58
" 25a. Fees funded in Quebec 60
" 26. All fees now regulated on plan devised by Hon. E. Blake 60
" 27. Salaries to local masters 61
" 28. How to preserve a just equilibrium where fees are commuted for fixed sums 62
" 29-35. Salary to clerk of peace and county attorney 62
And suggestions as to how it should be fixed and as to the regulation of their duties 62
" 36. Fees in the division courts 64

V.—Part IV. As to amount of compensation.

Paragraph 38-39. Tables of returns classified 65
" 40. Comparative amounts allowed for registrars in Quebec 78
" 41. And New Brunswick 78
" 42-46. Sheriffs relatively underpaid 78
" 43-44. Scale of fees suggested for clerks of courts 78
" 47. And as to registrars of deeds 79
" 48-49. Expenses of the offices should be systematized in the case of assistants, etc 79
" 50. Summary of results 80

Special appendix 81

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To His Honour the Honourable George A. Kirkpatrick,
Lieutenant-Governor of Ontario.

MAY IT PLEASE YOUR HONOUR:

The undersigned, having been appointed by Commission under the Great Seal of the Province, bearing date the 26th day of March, 1894, and by Supplementary Commission, bearing date the 10th day of April, 1894, "to collect and report the facts bearing on the various views which have been expressed with respect to the mode of remunerating and appointing certain Provincial officials, now paid by fees, and with respect to the extent of the remuneration they should receive, including in regard to the said matters respectively, the practice and experience of other countries," beg leave herewith to submit their report.

PRELIMINARY.

1. The Commissioners while, open to receive communications from all quarters, yet took pains to communicate with those who were thought best qualified to speak about the matters in hand. Lists of questions were prepared, accompanied with circular letters, and these were sent to prominent men in the different counties, especially to those holding municipal offices, in order to elicit such information as could be thus obtained. These, however, were not generally or systematically answered, except by the county judges, from whom has come a valuable contribution of enlightened judgment and experience. The Registrar's Association also submitted an important paper. These with the questions and letters are to be found in the appendix.

2. The Commissioners also held meetings for the interrogation and examination of those to whom circular letters had been sent and others in various parts of the country, from whom it was hoped to ascertain facts as to the working of the present system, and as to its advantages or defects. The choice of persons was made irrespective of politics or religion, and with a view to test the state of opinion, observation and experience, in different localities, so as to furnish an aggregate which might be deemed fairly representative of the whole province. Such meetings were held at the following places: Toronto, Stratford, London, Chatham, Cornwall, Kingston, Belleville, Cobourg, Brantford, Guelph, Palmerston, Owen Sound, Barrie, Ottawa, Hamilton, Simcoe and Woodstock.

The testimony, which was taken by stenographic report, and afterwards submitted for verification to the speakers, will be found in the appendix.

3. The Commissioners also visited in separate bodies, some of the Eastern and Western States of the American Union, but directed their investigation there to inspection of offices, and conversations with officials and men of affairs, in order that they might better appreciate and understand the accounts of American institutions, and their working, which are to be found in print. No just notion can be obtained by the mere perusal of the statutes. The practical knowledge thus obtained has been found very serviceable, and has been applied in many parts of this report, although no such verbatim reproduction of the results can be given, as in the case of information obtained in Ontario; but in the special appendix annexed hereto may be found a resume of some of the results as gathered by the members of the Commission.

4. It is not deemed necessary to give an exhaustive analysis of the testimony collected by the Commission. It seems sufficient to say that the views enunciated in the report are in conformity with those entertained by the great mass of witnesses examined in this, that there is no good reason for making any change in the appointive system. On other points, as to compensation and its different details, there is a great variety of opinions and suggestions, out of which the Commissioners have endeavored to elaborate the best conclusions.

5. The Commissioners have also reported to some extent as to the method of administration and remuneration in other English-speaking coun-

tries; though this field is necessarily so large that it may be thought enough material has not been gathered to be of service in comparing contemporaneous systems and methods.

6. The endeavor of the Commission has been to lay hold of the salient points of other systems illustrative of, or conformable to, or contrastive with the Ontario system: but they feel in doubt whether too much, or too little, has been brought together under this head of enquiry. They would, however, affirm this, that Ontario has a good administrative system of steady native growth, and that the needs of the country may be better satisfied by the development of what we have, than by copying the fashions of other countries.

7. The necessity of having a uniform and scientific audit of municipal accounts was more than once brought before the Commission, though that matter lay outside of the scope of their investigation. Attention has already been called to this in the report of the Commissioners on municipal affairs, and legislative action has been taken in a like direction in 1893, in the State of Nebraska, by an Act to provide for examination, by direction and under supervision of the auditor of public accounts, and by means of two competent accountants, of the books, accounts and affairs, in the office of county treasurers, and to establish uniformity in the keeping of accounts. (Cap. 15).

8. Some of the official reports for 1894 have come into the hands of the Commissioners since the greater part of this report was prepared. For purposes of comparison, a table compiled from these is placed in the special appendix annexed hereto. It has been framed so as to show the amounts received by the various officers, and the sources from which such receipts are derived, with a column added to illustrate how much will be payable for public use from similar receipts when the legislation of 1894 (57 Vict., cap. 9,) takes effect.

With these preliminary words, the Commissioners proceed to set forth the substance of their report:

PART I.

1. The particular offices understood to be in question are: Registrars of deeds, sheriffs, local masters and deputy registrars, deputy clerks of the crown and clerks of County Courts, registrars of Surrogate Courts, county attorneys and clerks of the peace, Division Court clerks and bailiffs.

These officers all come under the general head of administration of judicial affairs, except that of registrars of deeds, which may be classed under the head of regulative administration as to the ownership of land.

2. The first essential matter involved in this enquiry is one affecting the distribution of Government power, as between the province and the municipalities. The right of patronage as to certain offices is now exercised by the Provincial Executive Government. Shall this be transferred to other hands? And if so, for what reasons? A change for the mere sake of change is not worthy of consideration.

To what extent may central powers be localized without detriment to the State? There was a distribution of such powers upon the introduction of the municipal system into Upper Canada in 1841 and 1849. Powers, administrative and financial, theretofore vested in the justice of the peace, once the "State's man-of-all-work," were then transferred to local representative bodies, and the magistrate retained his merely judicial functions. Again in 1867 there was a further

distribution of central powers, when the control of many departments of public affairs was transferred from the Province to the Dominion by the Imperial Confederation Act.

Now arises the question: Shall public interest be benefited by a further reduction of central power, whereby county councils or the inhabitants of counties shall choose the incumbents of various public offices in these territorial subdivisions of the province?

3. It is a begging of the question to advocate the change by calling these officials "county officers," as synonymous with "municipal officers." They are state officers, that is public officers, localized in the counties for public convenience, but not local officers of the counties. The duties they are charged with are not of circumscribed character pertaining to a particular locality, but are of general importance, affecting the community as a whole. The well-being of the whole province is involved in the efficiency of their service.

4. Some historical retrospect, chiefly with reference to the officers and institutions in question, may assist to a better appreciation of the matters in hand. The history of legislation exhibits the needs of the country, and the way in which they have been satisfied by Imperial and colonial statesmanship.

5. In 1788 the first step was taken towards the establishment of civil government in the western part of the old French Province of Quebec. By proclamation of the governor it was divided into four new districts: Lunenberg, Mecklenberg, Nassau, and Hesse. For each district a Court of Common Pleas, to be held by three lay judges, was erected. Justices of the peace were commissioned to hold Courts of General Sessions, and for each district a clerk of the peace, a coroner, and a sheriff were appointed by the governor.—Howard "Local Constitutional History," i. 434.

6. By the Act of 1791 the old province was subdivided into Upper Canada and Lower Canada. Lieutenant-Governor Simcoe in 1792 proclaimed the division of the new Province of Upper Canada into nineteen counties, for purposes of military organization and electoral representation in the legislature. One of the first acts of the Provincial Assembly was to change the names of the districts to Eastern, Midland, Home and Western. These districts were originally established, and were now continued, mainly for the administration of law and justice; whereas for purposes of settlement the first local divisions were parishes or townships. The officers still existing, historically extant when Upper Canada became a province, were the sheriff, clerk of the peace, and justices of the peace, appointed in and for each of the four original districts.

7. In 1792 it was provided that the sheriff should appoint and discharge the gaoler and keeper of the gaol and court house. (32 Geo. III., c. 8,s. 14). The justices at quarter sessions were to make rules for the gaol and to fix a yearly salary for the gaoler in lieu of fees.

8. Provision was also made in 1792 for a Court of Requests for the easy and more speedy recovery of small debts, (under 40 shillings), consisting of two or more justices of the peace, from which the present Division Court was evolved; and in 1794 for the District Court, (for small causes over 40 shillings and under £15), the origin of our County Court. (34 Geo. III., c. 3).

9. In 1793 the Court of Probate was established, the Lieutenant-Governor to preside, with power to appoint an official principal of such court, together with a register and such other officer as might be required. (33 Geo. III., c. 8). He was authorized to institute Surrogate Courts in each district, to appoint a surrogate to preside, and a registrar. (*Ib.* s. 2).

In 1794 the Court of King's Bench was established. This superseded the former Courts of Common Pleas, and a tariff of fees was fixed for marshall, crier and sheriff. (34 Geo. III., c. 2).

10. The beginning of local government appears in 1793 in the shape of legislation by which the inhabitants at annual meetings, called by the high constable, were enabled to elect parish, or "town officers." This designation was changed in 1835 to "township" officers, both meaning the same thing. (5 Wm. IV., c. 8). These officers were town clerks, (who kept the records, etc.), collectors, assessors, overseers of roads, fence viewers, pound keepers, and the town wardens. (33 Geo. III., c. 2). The high constable was appointed by the justices at quarter sessions, as were the other township constables.

11. In each county the justices of the peace were to appoint a surveyor of highways, and might direct him to employ a surveyor of lands in order to lay out new roads. (50 Geo. III., c. 1). The justices in quarter sessions were also authorized to fix and establish markets, and had jurisdiction over slaughter houses, and nuisances in towns, etc. This was called "establishing a police"* in the particular town, by which the magistrates were able to regulate various matters of local concern, such as paving, cattle, bread, etc. (57 Geo. III., c. 2 and 59, *ib.* c. 5). They had also to deal with the licensing of innkeepers, fixing the dog tax, appointing the treasurer of the district, and publishing yearly statements of district accounts. These and other *variorum* duties were the colonial equivalents of the still more miscellaneous functions filled by the English magistrates of like standing. As Mr. Maitland says, with grave humor: "Lawyers abandoned all hope of describing the duties of a justice in any methodic fashion, and the alphabet became the only possible connecting thread. A justice must have something to do with railroads, rape, rates, recognizances, records and recreation ground, with perjury, petroleum, privacy, and playhouses, with disorderly houses, dissenters, dogs and drainage."—"Justice and Police," p. 84.

12. In 1795 the Act for the Public Registry of Deeds, Wills, etc., was passed, which is the foundation of the existing law. The declared object was to establish a register in each county or riding of the province wherever it might be deemed necessary, and as required: the Lieutenant-Governor to nominate and appoint a person of sufficient integrity and ability to each office. It was provided, because of the scanty population, that one "register," (as he was then styled), might perform the duties of more than one office; he was to attend between 9 and 1 o'clock, and to receive for fees the sums specified.

13. In 1822 the judges were directed to establish fees to be taken by all officers of the court; again, in 1827 scales of fees were fixed for the judge and registrar of the Surrogate Courts, and for justices of the peace, by statute in that behalf.

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* The word "police" is here used in its primary sense, as meaning the regulation of a place with reference to the maintenance of order, the prevention of offences and the enforcement of laws relating to the health, safety and comfort of the locality.

Writing in 1780, Jeremy Bentham says that the word "police," though of Greek origin, seems to be of French growth, and from France imported into Great Britain, where it still retains its foreign garb." (Works i. 102, note). It was of common use in Canada earlier than this, and the word is found side by side in the French and English version of Quebec Ordinances. Thus in 1777 (17 Geo. III. c. 15) appears an "ordinance to empower commissioners of the peace to regulate the police of the towns of Quebec and Montreal."

It is found in Johnson's dictionary as a French word used in England, and meaning the regulation of government of a city or county so far as regards the inhabitants.

The use of "police" as meaning "constable" is of more modern date, and is an example of the usual abbreviation of compound terms, it being a colloquial equivalent for the police force or the "body of police constables." (See an interesting note in Maitland "Justice and Police," p. 105.)

14. The next step in evolving local government took place in 1832, when a board of police was incorporated for the town of Brockville, of which the members were to be elected by qualified voters. This board had all the ordinary powers of municipal corporations in regulating houses of entertainment, wharves, weigh-houses, measures, etc., and had the power of appointing the usual officers of such corporations, viz., surveyor, clerk, assessor, bailiff, collector and treasurer (2 Wm. IV., c. 17). This plan of procuring special charters was followed by other considerable centres of population in the next two years, for example, Hamilton, Belleville, Cornwall, Prescott, Kingston and Port Hope.

15. In 1833 the constitution of the old Court of Requests was changed, and provision was made for the appointment of two or more commissioners by the Lieutenant-Governor, who were to hold court at the same place within their respective divisions, and these divisions, (to be numbered one, two, three, and so on,) were to be ascertained and declared by the justices in quarter sessions. The commissioners were to appoint the clerk, and also the bailiff, of the court; and fees for commissioners, clerks and bailiffs were enumerated in the Act. (3 Wm. IV., c. 1.) In this way began the present "Division" Court.

16. In 1834 we find the now familiar term, "municipal government," first used in the statute book in connection with the town of York, the name of which was then changed to Toronto. The language used is interesting, and marks another step in the development of the institutions of Ontario: "Whereas, from the rapid increase of the population, commerce and wealth of the town of York, a more efficient system of police and municipal government than now established has become obviously necessary, and whereas none appears so likely to attain effectually the objects desired as the erection thereof into a city, and the incorporation of the inhabitants, and vesting in them the power to elect a mayor, alderman and common councilmen, and other officers, for the management of the affairs of the said city, and the levying of such moderate taxes as may be found necessary for improvement and other public purposes." Legislative and executive power, (limited to local needs and uses,) was vested in the mayor, aldermen and councilmen, who were called "representatives of the city." Power was given to appoint one chamberlain, (who might be the treasurer of the Home district), one high bailiff, a clerk, a coroner and constables. The clerk of the council was by virtue of his office to be clerk of the peace in and for the city, and to perform all the duties incident to the office of clerk of the peace for any district. (4 Wm. IV., c. 23.)

17. On the 10th February, 1841, the union of Upper and Lower Canada was consummated by royal proclamation pursuant to the Imperial Act 3, 4 Vict., c. 35. By sec. 58 of that statute the governor was empowered to constitute townships in those parts of Canada not so constituted, and to provide for the election and appointment of township officers therein, after the existing model of townships in Upper Canada.

18. At this point it is convenient to regard the status of townships prior to and at this date, 1840. The law on this head had been reduced to one Act, or as we now say "consolidated," by the Act of 1835. (5 Wm. IV., c. 8.) The yearly meeting of the inhabitants was convened by the clerk of the township in all townships when there were 30 resident householders, and at this assembly they were to appoint a chairman, and then choose one clerk, one assessor, one collector and three persons to serve as commissioners for the township, and any number of persons to serve as overseers of highways, roads and bridges, and as pound-keepers. The clerk of the township was to be the clerk of the board of commissioners. This board was charged with various duties: order-

ing the repair of roads and bridges, dividing townships, and alloting duties to overseers for the respective divisions, regulating the compensation of pound-keepers, filling up vacant offices, enforcing penalties and appointing "town wardens" to care for children. The commissioners and their successors were to be as a corporation to represent the whole body of inhabitants of the township, and might as such hold property, and defend and sue in the courts. In 1837 the name of the *quasi* corporate board was changed from "commissioners" to "wardens." (1 Vict., c. 21.)

19. The inconvenience of holding the annual township meetings, on account of the great increase of population, is beginning to be recognized in this year, and is referred to in 7 Wm. IV., c. 20, and no doubt contributed to the changed method of election which was afterwards introduced into the Canadian municipal system.

20. This brings us to the year 1841,—a notable one for the future of Canada,—in which the former representative assembly became the controlling body in the new system of responsible government; and in which also matters of local concern were turned over to the control of the localities, under the new system of municipal self-government. Both beneficial changes having been much agitated in the province, were brought into prominence in the report issued by Lord Durham, and were, (as is well put in Caldecott's "English Colonization," p. 131,) the "result of systematic thought brought to bear upon politics." As to the general government, the main result was to place the executive branch under the control of the Legislature, and ultimately under the control of the electorate. And this, by no written provision of law, but by the application of modern English constitutional principles, whereby the ministry must obtain and retain the confidence of the Legislature, and so stand or fall by their vote.

21. The other change was responsive to that paragraph of Lord Durham's report which relates to local government. He there urges the establishment of a good system of municipal institutions throughout the provinces as a matter of vital importance. The report proceeds: "A general legislature which manages the private business of every parish, in addition to the common business of the country, wields a power which no single body, however popular in its constitution, ought to have; a power which must be destructive of any constitutional balance. The true principle of limiting popular power is that apportionment of it in many different depositories which has been adopted in all the most free and stable states of the Union. Instead of confiding the whole collection and distribution of all the revenues raised in any country for all general and local purposes to a single representative body, the power of local assessment, and the application of the funds arising from it, should be entrusted to local management. The establishment of municipal institutions for the whole country should be made a part of every colonial institution."

22. The Act of 1841 for the better internal government of Upper Canada by the establishment of local or municipal authorities therein, made provision for incorporating all the inhabitants of the several districts, with power to be exercised through the council composed of warden and councillors for each district. The councillors were to be elected: the warden was to be appointed by the governor. The names of three persons were to be submitted for the office of clerk of the council, out of whom one was to be selected by the governor as district clerk. The district treasurer was also the appointee of the governor. His accounts were subject to quarterly audit by district auditors, one to be appointed by the warden and one to be elected by the council. Power was given to the council (*inter alia*) to make by-laws as to internal communication by roads,

bridges, and public buildings; purchasing and selling property for the district; defraying the expenses of the administration of justice within the district; fixing the remuneration of all district officers appointed under the Act; determining the amount of salary, fees, etc., to be received by township officers.

Some powers vested in the magistrates were transferred to district councils, but the Act was not to affect corporate towns or places having boards of police, or other local or municipal authorities. (4 and 5 Vict., c. 10).

23. In 1846 the members of the district council were empowered to appoint one of their own number to be warden, (instead of the governor,) and also obtained the right to appoint clerk, treasurer and surveyor. It was also declared that the clerk of the peace should always be eligible as district clerk.

24. In the same year it was provided that the expenses of the administration of justice in Upper Canada, then paid by local taxation, should be paid out of the public funds of the province. These expenses formerly payable out of the district funds to the clerk of the peace, sheriff, coroner, constable, crier, etc., were placed as a charge upon the general treasury. (9 Vict., c. 58).

25. In 1849 the territorial division of "district" was abolished, and the name of "county" substituted; "in this particular," as the statute declares, "following the example of the mother country," and retaining only the name of county for judicial as well as all other purposes. (12 Vict., c. 78). District courts became county courts, and all and singular the offices and officers appertaining to the districts thenceforth belonged, and appertained to the counties (s. 3).

26. In 1849 the municipal system took its present form, and became comprehensive of all parts of the province. The previous general laws related to rural localities only—leaving towns and the like centres of population to be furnished with special charters. Now, however, it was declared to be of great public benefit and advantage that provision be made by one general law for the erection of municipal corporations, and the establishment of regulations of police in and for the several counties, cities, towns, townships, and villages of Upper Canada. (12 Vict., c. 81). And the Act proceeded to provide for the local organization and government of townships and counties, villages, towns and cities, and forms fundamentally the staple of the present municipal code of Ontario.

27. Contrast with the growth of institutions in Ontario the political development of the state of Michigan. That state is conterminous with the more fertile parts of Ontario, and has about the same population; Ontario having by the census of 1891 a population of 2,112,989, and Michigan by the U. S. census of 1890 having 2,093,889. Now Michigan was originally a part of Upper Canada. It was embraced in the territory of Canada by the Quebec Act of 1774, and thus formed part of the district of Hesse, and afterwards of the Western district of Upper Canada. The early governmental system of Upper Canada embraced the area of Michigan till 1796, when it ceased to be occupied as a part of the British Dominion, and was surrendered to the United States pursuant to Jay's Treaty of 1794. Michigan was erected into a separate government as a territory in 1805, and counties for judicial purposes were set apart by the governor. Each county was to have a sheriff, a coroner, a treasurer, and a judge of probate, all appointed by the governor. But during the long term of General Cass, 1813-1831, he fostered among the people his own New England ideas of popular government, and hence the introduction of the incorporated townships, and the system of elective township and county officers, under an enabling Act of Congress in 1825.

28. Michigan became a state in 1836 with a constitution giving the power of appointment of judges to the governor. But under the "powerful democratical stimulus of backwoods life" the people were prepared to go even beyond the example of their eastern model. In 1850 when, as Judge Cooley says, "radicalism was in the air," the reformed constitution of that year greatly restricted the power of the governor, and required all judicial officers from highest to lowest to be elected by the people, as were also all the heads of departments and all other important officers.

29. By the constitution of 1850 it was ordained that in each organized county there should be a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney chosen by the electors thereof, once in two years, and as often as vacancies shall happen. (Art. X., s. 3). The affairs of the county were directed by a board of supervisors consisting of one representative elected by each town (township).

30. The State of Michigan has thus developed into a commonwealth where administrative authority is decentralized almost to the vanishing point; in effect it is a cluster of small separate republics called counties, electing their own judges and officers, legislatively under the general laws of the commonwealth, but working them out independently of each other and of the state.*

31. The municipal system of Ontario is the outcome of native statesmanship based upon English precedents; but shaped to completion upon lines that have only lately been followed in the mother country. There appears to have been deliberate consideration of the methods of county and municipal government in vogue in the American States, and a rejection of these for the more congenial, as well as more appropriate models suggested by English municipal reform in the boroughs.

32. Originally, and apart from the yearly election of officers at the town meeting, much of the administrative and financial work of the town and township in Upper Canada devolved upon the justices of the peace, (representing the central power.) Next, the work is taken from the magistrates and lodged in the hands of an elected body called (in the rural localities) "commissioners," and afterwards "wardens."

33. This is a deviation from the English plan of casting miscellaneous township work on the justice of the peace, and an adoption, or rather an adaptation, of the commissioner system of government in vogue in some of the States *e. g.*, New York. But this is only for a brief period of transition, after which the final form is adopted which is an advance upon both English and American models.

34. Note also the application of the principles of self-government to the towns, (using that word as now understood.) manifested in special legislation. While at first the making of rules and regulations for police governance, and the enforcement of them, are relegated to the justices in quarter sessions, the next step was to commit these functions to an elected board of police chosen by and from the inhabitants of the place. And this was but introductory to the next advance by which all the inhabitants were incorporated, and a representa-

* After the above paragraphs were written as to the State of Michigan, the following apposite testimony was sent by letter to the Commissioners from one who, in professional judgment and experience, is well qualified to express a trustworthy opinion: Mr. Elisha Taylor, of Detroit.

"I have conferred with other men here, prominent in business and in professional life, intelligent and of good judgment, and we have no hesitation in saying that we believe that the present mode of appointing, remunerating, supervising and controlling officials in Canada referred to in your circular, is safer, more economical and gives better service to the people, and prevents dishonesty more than the methods we have ever had in the State of Michigan. We think your methods are excellent."

tive council, elected by the people, became the organ of municipal government. This last advance was no doubt suggested by the nearly contemporaneous change in England ameliorating the system of borough government in 1834.

35. But the defect of the English Reform Act of 1834 was that its operation was confined to cities and towns. The Act was merely for "municipal" reform, and that word has in England a meaning limited, (as indeed it has also in the United States,) to incorporated towns or urban localities. The word thus takes its color and scope from the feudal system where all civil rights were concentrated in towns. The anomalous condition arising from this partial reform is commented on by Harriet Martineau in her "History of the Peace," (p. 469.) "It is an evil all round that the nation should be divided into two populations—the urban and the rural, whose interests are supposed to be antagonistic. It would have been a vast benefit to all if the two populations could have been united under a system of local government whose objects are of absolutely universal importance, instead of being separated as peremptorily as ever by the reform of town government, while rural administration remains as before. So the rural population remained in a backward and unfavorable condition, subject to the jurisdiction of the justices of the peace of counties and divisions of counties, while the town population is in the enjoyment of a representative system, which by improving their intelligence and independence could not but widen the severance between the two populations to the disadvantage of the rural."

36. No comprehensive scheme of decentralized administration for all England was brought into force till the enactment of the local government Acts of 1888 and 1894. By these Acts representative organs were provided for the counties, similar to those theretofore confined to corporate towns. Local affairs were taken out of the hands of the magistracy and given to a body elected on a popular franchise. This newly elected body, called the "county council," exercises all the administrative functions as to asylums, schools, bridges, main roads, court houses, lock-up houses, etc., formerly vested in justices of the peace—the latter officers being now restricted to the discharge of judicial business.

37. This sweeping change in England was in Ontario anticipated for the whole province by the Canada Municipal Reform Act of 1841, and the great principles of decentralization and representation were thus applied to local concerns nearly half a century before the mother country gave local institutions to all England. The officers, which the county council in England has the power to appoint and fix the salaries of, are the county treasurer, county surveyor, medical health officer, public analyst, and any other officers paid out of the county rate. The clerk of the council is to be also the clerk of the peace and is appointed by a joint committee of the council and the quarter sessions.

38. Both in England and Ontario we find in regard to the matter in hand, the lines plainly drawn between the functions of government which are of general importance, and those which are deemed merely local. The outcome is that of political experience developing along the lines of the constitutional system common to both countries. The roots of our institutions are fixed in native soil, and should not lightly be disturbed. "Constitutions are not made, but grow," the maxim runs; in Ontario the constitution has been shaped according to the growth of the country, so as to express and answer its expanding needs. Further development should be guided according to the principles of responsible representative government, not according to those extreme democratic methods where the executive is not in touch with the legislative branch, and where the people distrust every organ of government.

39. It is worth recalling that in the pre-union period of Canadian history, (in 1837,) there was an attempt made to hasten the process of political evolution by a resort to revolutionary methods. The constitution was to be displaced, and parts of the new fabric were to be after American plans. Thus the higher class of Upper Canada judiciary was to be appointed by the Governor, and the Governor himself was to be elected by the people. So justices of the peace and commissioners of the lower Courts of Request were to be elected for three years by popular vote. Again, because of the old unreformed colonial system of irresponsible government patronage, it was proposed that all sheriffs, registrars of deeds, clerks of the peace, etc., should also be elected by the people and hold office for a term of four years. The draft of a new constitution was published by W. L. Mackenzie on 15th November, 1837, which contains, among other provisions, the following: (59) The Governor shall be elected by the people at the times and places of choosing members of the Legislature; (62) The Governor shall nominate and appoint all judicial officers, except justices of the peace and commissioners of the Courts of Request or local courts; (66) A competent number of justices of the peace and commissioners of the Courts of Request shall be elected by the people for a period of three years, within their respective cities and townships; (74) Sheriffs, coroners, clerks of the peace and registrars of counties and districts shall be chosen by the electors of the respective counties and districts once in four years, and as often as vacancies happen. Sheriffs shall hold no other office, and be ineligible for the office of sheriff for the next two years after the termination of their offices. (See Lindsay's "Life of Mackenzie," vol. ii., pp. 344-356). Doubtless a grievance existed at that time as to these official appointments, but the suggested remedy was not equal to the better methods of general and local government which were presently to follow this period of political disturbance. The need was then exigent to consider and readjust the whole frame of government, and redress came in two ways: *First*, in the general government the executive was brought into close relations with the representative body, and was, for all provincial purposes, subjected to its control; and, *second*, the internal domestic management of the country passed into the keeping of the inhabitants, and was managed by their municipal representatives. It being necessary to distinguish between what was for central, and what for local control, the separation was advisedly made on the basis of British rather than American precedent. Thus was brought about in the forties a complete system of central and local government, recognizing the great principles of decentralization and representation which were afterwards worked out to similar issues (as to local government) in England, and as to both local and central government in the Australian colonies. The reasons urged in 1837 for an elective method of filling provincial offices ceased to be of weight after 1841, when the introduction of responsible government and municipal reform gave to the community practical control of all public affairs. So, indeed, it became manifest to the leader of the movement after half-a-dozen years of expatriation in the United States. He thereby gained such familiar insight into the working of the system which he had admired at a distance, that he renounced his earlier preference, and sought to return to Upper Canada, that he might enjoy the protection of its institutions under the reformed system of administration. (See Lindsey's "Life of W. L. Mackenzie," vol. ii., pp. 292-356).

40. The historical argument favors greatly the maintenance of existing methods of government. Ontario having entered the confederation of Canada, what reason exists for now enlarging the scope of municipal govern-

ment, and decreasing the power of the central government by withdrawing from the one and adding to the other duties which rightly pertain to the chief executive of the province ?

41. This enquiry deals with the actual form of government as it exists in Ontario—recognizing, therefore, the presence of parties holding different views of public questions, with the ultimate outcome in the Cabinet as guide of the Legislature, and the active power of the Executive. Thus have political forces shaped themselves under the constitutional system common to Great Britain and her most advanced colonies. The enactment of public laws by the Legislature, and the application and enforcement of them by the Governor in Council, go hand in hand. Wherever and so long as the "Cabinet system" obtains, one of its characteristics is the appointment of important public officials. The right of patronage is properly in the hands of the party in power. This power, like all other powers, may be abused, but in itself it is a legitimate function of the government of the day to be exercised for the public good. The following passage from a Canadian constitutional classic places the matter in a just light. Mr. Todd says : "In selecting individuals to fill subordinate places of honor and emolument, a great responsibility devolves upon the existing administration. Public opinion will no longer tolerate the prostitution of offices for political services that so often disgraced our history in former times. It is now an admitted necessity that everyone appointed to an office of trust, however small, should be qualified for his post, otherwise the choice will bring discredit upon the Government, and may lead to the withdrawal of public confidence and parliamentary support from those who are accountable for the same. But so long as this principle is not lost sight of, it is acknowledged to be the privilege of the administration to give the preference in appointments to office to their political friends and supporters ; for among the powers that are required to enable a government to perform its functions with efficiency, there are few more essential than that of reward." "The patronage of the Crown," says May, "has ever been used to promote the interests and consolidate the strength of that party in which its distribution has happened to be vested. It is true that the offer of places, as a corrupt inducement to vote at elections, has long been recognized by the Legislature as an insidious form of bribery. But while carefully avoiding the commission of any offence against the law, the patronage of the Crown, within certain limits—to be presently noticed—has been systematically, though not invariably, distributed by the ministry of the day, as a means of rewarding past political services and of ensuring future support. The greater part of all local patronage has been dispensed through the hands of members of parliament supporting the ministers of the day ; they have claimed and received it as their right, and have distributed it avowedly to strengthen their political connection." ("Parliamentary Government in England," i, 380-381, 1st ed.) The exceptions alluded to above are as to judicial offices, in which the choice is made with regard to merit and qualification, apart from personal or party considerations, and as to civil service nominations for minor appointments, which are often given irrespective of political considerations.

42. Assume the abuse of the right of patronage in some such way as is exemplified in the rise of the "spoils system" in the United States, where the successful party used its power to vacate offices in order to bestow them upon partisans under the name of the "spoils of victory." What is the remedy ? Not, it would seem, the method of popular election. That expedient was introduced for this purpose in the United States, but it has not answered the expectations of statesmen and patriots. Rather some such plan as is now in

vogue in the colony of Victoria, which, Professor Jenks affirms, is working towards the extirpation of the party system altogether. He tells us that in Victoria appointments and dismissals are made by the Executive Council. But no appointment can be made unless upon the request of a permanent head of a department, and upon the certificate of the public service board—a non-political body—which in giving its certificate names the person entitled to the appointment by strict statutory provisions. No official can be dismissed or punished, (save for proved misconduct,) except by the public service board with the consent of the Executive Council. This system has been in force since 1883, but while the party system for this and other reasons is dying a natural death, the professor doubts whether a cast-iron system of appointment and promotion is calculated to produce the best public service for a community.—"Government of Victoria," pp. 274-307. This doubt, independently of Professor Jenks, is shared by another eminent professor who has made a specialty of this branch of public law.—Goodnow, "Comparative Administrative Law," vol. ii, pp. 45-6.

43. It may be useful at this point to set forth the results of American experience as summarized by Professor Goodnow. The peculiar methods prevalent in the states of the Union of popular election and short tenure of office arose out of the abuses of executive patronage. At the outset offices were held for an indefinite tenure. The first change was made in 1820 by the National Government, so that the term was fixed at four years for certain accounting officers. The same limit was next made to apply to almost all officers in the National Government, and from thence it spread into the administrative system of most of the commonwealths. The design was to facilitate arbitrary removals from office with a view to fill the vacant berths by persons in sympathy with the dominant party. It was a distinctly American invention and took shape as a principle under the name of "rotation in office." (See Goodnow, vol. ii, p. 91.)

44. Again as to the change from the appointive to the elective system he says: "Originally the common method of filling offices in the United States was by Executive appointment, the early exception being as to town (*i.e.* township) officers. Partisan use was early made of the power of appointment in New York. Each party that came into power felt that it was its right to fill all offices to which appointment might be made with its own adherents, and to make places for them by the discharge of existing officers. This habit made its way into the national administration, and thence spread to every one of the commonmonwealths. The evils resulting from such a power led the people very generally to change the method of forming the official relation. Many of the officers were made elective. The movement continued from 1825 to 1850, with the final result that almost all the important offices were filled by popular election, both in the central commonwealth Governments and in the localities. Since 1850, however, there has been somewhat of a reaction in favor of the old method of Executive appointment, the reason being found in the fact that the method by election did not have the beneficial results which were expected of it.—Goodnow, vol. ii, 14. The attempt is now being made, he also tells us, to secure the repeal of the laws which introduced the principle of fixed or short tenure of office into the American system.—*Ib.* 92.

45. It must not be lost sight of that an essential distinction between the American method of government and ours is, that in the United States the Executive is independent of the Legislature, whereas in England as in Ontario the two are linked, so that Ministers of the Crown must obtain and retain the confidence of Parliament in order to exercise the functions of admin-

istration. Hence in the States the people act upon the Executive directly and only at the fixed periods of election, and not as here constantly through the medium of their representatives in the Assembly.

46. The Executive abuse of patronage in the States was therefore sought to be checked by the people taking the matter into their own hands by constitutional amendment. This they preferred to another method of redress, viz., by making the Executive responsible to the popular Assembly. That would be the adoption of the English method, which we possess. But the American plan of election is characteristic of an extreme democratic community, jealous of all organs of government, legislative and executive; they show it by tinkering at the written constitutions of the states, and so hampering the Legislature as to details which are properly cognizable by that body; they show it in the matter of election of public officials, whereby the executive power is depleted to insignificance.

47. Albert Stickney in his "Democratic Government" (1885), p. 115, says: "In the United States we have very thoroughly tried the system of distrust. We have assumed that men could not be trusted with power. We have made large numbers of public officials elective, and have given them short terms of office with the idea that it was necessary to keep officials at all times in a state of apprehension as to a re-election, and that thereby we could keep public officials at all times under the control of the people. That system has failed. Our political experience shows that that system turns Government into an election machine, and puts the administration of public affairs largely into the hands of political adventurers."

48. But if no reason exists for distrusting the representative Assembly of the people in Ontario, there should be no reason for distrusting the exercise of power conceded to the Executive by the Legislature. Upon representative foundations rest the institutions of Canadian Government, Provincial and Federal.

49. Now the American state system exalts the sovereign people, the electorate, over-works the Legislature, and minimizes the executive power. It recognizes that whatever affects the rights of all citizens as to person or property belongs to the central authority, in the sense that it is the function of the state to pass general laws and frame uniform plans under which these general rights may be administered in the various territorial divisions of the state. This local administration may or may not be subject to more or less central supervision, but the local administration itself is in the hands of elective officers chosen by the people. Administration of justice, preservation of peace, transfer of property and the like are state affairs doubtless in theory, but practically the handling of them as between man and man in daily life is abandoned by the state to the different localities, whether city, town or county, where choice is made of the requisite functionaries.

50. Let the main question under consideration be now restated: The alternative is between the local administration of general laws by local officers, locally chosen, and the local administration of general laws by officers, local as to situation, but chosen by the central power, which is upon the sound constitutional theory and practice of Ontario, responsible for the efficient execution of the general laws of the commonwealth.

51. If the appointing power is removed from the chief executive of the state, it is a minor matter where it is locally bestowed or distributed—whether to township or county councils, or left at large in the hands of the inhabitants.

52. If the power of appointment to office in any department of public affairs is withdrawn by the Legislature from the Executive, responsibility cannot rest upon the Executive for the due administration of that branch of service. If matters of general public concern are, so to speak, "municipalized," so that the choice of officers is distributed over the many local authorities into which the province is subdivided, it appears a matter of insuperable difficulty to plan any equivalent, in the way of governmental inspection or supervision, which will ensure a service uniform, adequate and efficient. At least such a discovery has not been made by our republican neighbors, according to the testimony of careful and friendly observers. The experience of the United States points to this conclusion: That the power of appointment and the power of dismissal should be kept in the same hands, in order to ensure an effective executive system. Thus writes Woodrow Wilson, "Executive power is diffused by our law throughout the local organs of government; only a certain formal superintendence remains with the authorities of the state capitols (s. 964). . . . The governor is not the Executive, he is but a simple piece in the Executive. It may be doubted whether the governor and other principal officers of a state government can, even when taken together, be correctly described as 'the Executive,' since the actual execution of the law does not rest with them, but with the local officers chosen by the towns and counties, and bound to the central authorities of the state by no real bonds of responsibility whatever. Throughout all the states, probably without exception, the sheriffs and other county officers, the county treasurers, clerks, surveyors, commissioners, etc., and the town and city officials also, as well as the judges of the courts, and the solicitors or district attorneys who represent the public authority before the courts, are chosen by the voters of limited areas, and are regarded for the most part as serving not the state, but their part of the state. Minor state officers there are, minor officers that is who serve ministerially the central offices—and these are often appointed by the governor; but it is exceptional for the governor to control in any real sense the officials, the local authorities, by whom the laws are put into actual execution (s. 974). It is characteristic of our state organization that the counties, townships and cities, into which states are divided for purposes of local government, do not serve as organs of the state exactly, but rather as separate, independent organisms, constituted what they are by state law indeed, but after being set up, left to themselves almost as entirely as if self-controlled. They elect their own officers, and go their own paces in enforcing the general laws of the state (s. 976 "The State"). Goodnow condenses the whole comprehensively thus: "The central administrative authorities have little control over the localities or the administrative authorities therein."—'Comparative Law," vol. ii., p. 141.

Mr. D. B. Eaton, upon this subject a specialist, writes in "Lalor's Cyclopaedia of Political Science," thus: "The officers at the head of the administration can be made to feel responsible for its good management directly—discipline can be preserved therein only—when they are able to control the selection and removal of all those below them."—Vol. iii., p. 141.

Charles H. Levermore, in his "Republic of New Haven," p. 289, says: "There is a principle of government which must sooner or later win acceptance, namely: Subordinate administrative officers should be appointed, not elected." The same maxim is also enunciated by Nordhoff's "Politics for Young Americans," s. 90.

The result of the American state system has its reflex action on the executive body. Quoting again from Woodrow Wilson, he says: "Relatively to the central organs of the state, local government is the most vital part of our system; as compared with either the Federal Government or with local authorities, the

central governments of the states lack vitality not only, but do not seem to be holding their own in point of importance. They count for much in legislation, but so far for very little in administration" (s. 1.043). Mr. Bryce calls attention to the effect of devolving functions of the central authority upon the localities, by which the province of the state is narrowed, and to the excessive legislation which encroaches on matters that might be left to executive discretion, and then adds: "It is a natural consequence of their arrangements that state office carries little either of dignity or of power" (I. p. 509, "The American Commonwealth." And at p. 537 he thus generalizes the result of his studies: "The truth is that the state has shrivelled up."

53. Our system is so shaped that the legislative and executive parts of the frame of government may co-operate in the enactment and enforcement of public laws; but so far as the official force is chosen by municipalities, to that extent the Executive is relieved of responsibility, and its influence and value lessened. If the power and functions of the Executive are substantially diminished by distribution among the localities, two effects will be more or less manifested: (1) Administration will tend to lose its harmony and become weakened by disintegration, and (2) the constitutional standing of the Ministry in our system of parliamentary organization will be prejudicially affected. At present, to use Sir William Anson's phrase, the Cabinet is "the motive power of the Executive," ("The Crown," p. 138); but allocate to local bodies important departments of public business and the Cabinet will, as to those branches, dwindle to the dimensions of a board of inspection and recommendation. The status of a Cabinet with depleted powers would decline, and both legislative and executive place would cease to attract the most competent men. In brief, the tendency would be to dwarf the province and exalt the municipality.

54. These, and like matters of grave moment, demand consideration before any change is made involving a constitutional departure so suggestive of far reaching results.

55. As against the suggested drawbacks, what gain may be looked for? Exchanging the appointive system for the elective, how would this affect the official *personnel?* No gain is likely to result. The method of appointment to office aims at economy of power, unity of purpose, and efficiency of action; the method of election subordinates everything to popular control. Now the advantage of popular control is entirely illusory where the electoral constituency is counted, not by hundreds, but by thousands. The average county in Ontario contains (say) 40,000 inhabitants—more than a hundred times the number of those who in the early days of New England made famous the elective system of town officers. The words of an American author, (more than once quoted,) are emphatic on this point. Prof. Goodnow says: "In order that such a popular control may be exercised, the people must be in a position to judge of the respective merits of the candidates for office. In the central commonwealth administration, and in the municipalities where the feeling of neighborhood is not strong, and where it will be difficult, if not impossible, for the people to know much about the merits of the different candidates, it is useless to adopt the elective method, in the hope that the people will by its means be able to exercise any appreciable control over the administration. The only way in which the people may exercise such a permanent control over the administration is for them to elect only the most prominent officers of the Government, who are then to appoint to the subordinate offices. If a long list of candidates is presented to the elector for his choice, if many of the offices to be filled by election are of a subordinate or unimportant character, (*i. e.* relatively so), even the most intelligent

voter is apt to become confused. Other reasons than the positive merits of the candidates are apt to influence his choice and the result of the election is apt to be in accordance with the wishes of those few persons who have the time and the inclination to busy themselves with the conduct of public affairs, rather than in accordance with the wishes of the people." (ii. 17.) He proceeds: "For these branches of administration, *i. e.*, the central commonwealth administration, and the municipal administration, the method of forming the official relation should be by appointment, if an efficient, harmonious and responsible administration under popular control is desired. This is the method which has been so successfully adopted in the national administration. This is also the method which has been adopted by the most recent and important municipal charters in the United States." (V. ii., 18.) And further: "The elective method of filling offices is in all instances unfitted for officers the efficient performance of whose duties requires the possession by the incumbent of large professional or technical knowledge. Such offices are those of judge, law officer, civil engineer, etc."—*Ib.*, p. 18.

56. Mr. Bryce quotes a forcible passage pertinent to the aspect of the question now under consideration (i. 614) from the address on municipal government of Mr. Seth Low in these words: "Greatly to multiply important elective officers is not to increase popular control, but to lessen it. The expression of the popular will at the ballot box is like a great blow struck by an engine of enormous force. It can deliver a blow competent to overthrow any officer, however powerful. But, as in machines, great power has to be subdivided in order to do fine work, so in giving expression to the popular will the necessity of choosing amid a multitude of unimportant officers involves inevitably a loss of power to the people."

57. If the exercise of the right of patronage by the dominant party is to be regarded as a disadvantage, it is one which would equally attach to the elective system. Of popular elections, Bryce thus writes: "They throw the choice into the hands of political parties, that is to say, of knots of wirepullers inclined to use every office as a means of rewarding political services, and garrisoning with grateful partisans posts which may conceivably become of political importance, i., p. 485. He is speaking of the election of judges, but his remarks are of general pertinence,—and see vol i., 590, where he points out that county officials are apt to be chosen on political grounds. The general experience of the various states is that all popular elections proceed on the same lines—the names of all candidates or nominees are grouped on one ticket—whether for legislative, or congressional, or county service—and all is engineered by the "Professional politician." What other result could be expected here, even if at first the election was to be for life, or during good behavior? For this plan would only obtain at the outset; the voters would soon be enamored of short terms, and frequent elections, so as to give every man a chance. American experience casts its light on this path also. This whole scheme of popular choice, short term, and frequent election, is most appropriate in the case of representatives of the people, so as to reflect and present that changing public opinion which is the prime factor of government; but it is highly inexpedient to extend such a method to the selection of officers who shall administer the laws—for such officers are not representatives of the people, and stability is one prime factor of their effective service.

58. From a scientific point of view the matter is admirably treated by Professor Henry Sedgwick. After stating that for legislative work it is desirable to constitute a numerous body of persons having voting power, elected and removable at short intervals by the citizens at large, he proceeds: "The executive departments on the other hand are mostly occupied with the continual

accomplishment of particular effects, in accordance with prescribed general rules or for the attainment of some prescribed end of public utility. Accordingly executive business may be assumed to have so much general resemblance to ordinary private business as to render it desirable that the details of the work in each department should be carefully portioned out amongst subordinates arranged in various grades and classes; and that these subordinates should loyally obey the direction of a single head, or of a body of persons sufficiently small to be able to deliberate easily and rapidly, and take prompt and sometimes secret decisions. Hence popular election seems generally undesirable as a mode of appointing even the highest grade of subordinates; partly because it would tend to give the elected official too independent a position; partly because the electors would not ordinarily be good judges of the special qualifications required for the different kinds of work. It would seem, then, to be, as a rule, desirable that subordinate members of the executive should be appointed by official selectors." P. 391, "Elements of Politics." Then after discussing the question of qualifying and competitive examinations for entrance into the civil service, (a question not now under consideration) he continues, at p. 402, by saying: "Popular election, however, seems hardly more adapted to secure the special qualifications required for good administration in headships of departments than in subordinate posts; the choice therefore may be taken to be between appointment by the legislature, and by the supreme executive. If we regard efficiency, it would seem that the majority of elected legislators will not be so well qualified by experience of executive work to select the most efficient heads of departments, or to dismiss with full and accurate knowledge of the proofs of unfitness as the supreme executive."—*Ib.*, p. 402.

59. Popular election as applied to the judicial and quasi-judicial officers is universally deprecated, and as applied to ministerial or administrative officers, the results are lamented by men of affairs and observers of political history, whose words command respect.

60. In an able paper by W. G. Sumner on "Politics in America, 1776-1876," in N. A. Rev., vol. 122, he reviews the trend of political affairs for the century, and at p. 81 draws this conclusion: "It seems to be perceived that the place of popular selection is applicable to executive and legislative officers, but that it is not applicable to the judiciary or to administrative officers. In the one case broad questions of policy control the choice; in the other case, personal qualifications and technical training, in regard to which the mass of voters cannot be informed and cannot judge. In some quarters an unfortunate effort has been made to charge the duty of making certain appointments upon the judges, because as a class they retain the greatest popular confidence, and the restraints of their position are the weightiest. This however seems to be using up our last reserves." The context shows that Mr. Sumner's use of the term "executive" in connection with "legislative," points to those political chiefs or heads of departments represented by the president and governors in the states, and with us by the members of the Cabinet.

Simon Sterne writes: Elective officers have been unduly multiplied to such a degree that it becomes almost impossible for the voter, busily occupied with the demands upon him of his business, to determine intelligently upon the merits of the numerous candidates presented for different offices by political organizations: Lalor Cyclop. Political Science, vol. 3, p. 586. And in the same volume D. B. Eaton says,: "the great number of candidates for election confuses and disgusts the voters in much the same degree that it makes the business of caucus management intricate, active and profitable. The election of such officers as con-

stables, county clerks, secretaries, justices and judges whose functions are in no sense representative, and who were appointed until the "spoils system" became established, is indefensible upon any sound principles. The changes that made them elective were naturally designed by all those interested in the patronage of party chieftains, or gains of primary elections. The honest voter, alarmed at the abuses of the appointing power, too readily consented to the change, in the hope that it would be an improvement. But for the abuse of that power such officers would never have been made elective; with a true reform they will be again made appointive."—*Ib.* p. 350. Be it marked, that by the "spoils system" is not meant the exercise of executive patronage upon the normal occurrence of vacancies, but the periodical dismissal of officials *en masse* upon a change of Government in order to appoint new men out of the dominant party.

Nordhoff, (a name that carries weight,) lays it down that "to enable the people to take an intelligent and real interest in politics it is necessary that they shall have to elect few persons—1 "Politics for Young Americans," 85.

Nordhoff further writes in the N. A. Review:

"The folly of obliging the people to decide at the polls upon the fitness for office of a great number of officers lies at the bottom of all the misgovernment from which we suffer, not only in the cities but in the states. It is a darling device of the political jobbers, and a most successful one; for under the hollow pretence that thus the people have greater power, they are able to crush public spirit, to disgust decent and conscientious citizens with politics, to arrange their "slate," to mix the rascals judiciously with a few honest men, wherever public sentiment imperatively demands that much, and to force their stacked cards upon the people.—P. 327.

In most of the states of the Union demagogues have persuaded the people that they are wise enough to choose a number of public officers, and that this is the most democratic way, the way in which the people can exercise the most control over their affairs. But in fact it is the way in which the caucus, and the reign of political jobbers is perpetuated; in which the people stultify themselves and resign all real control over their affairs to a secret unofficial and self-seeking council of political managers; and in which able and honest men, who cannot be the creatures of such a conspiracy, are almost inevitably driven out of political life.

The demoralization of our State Government, which is so general that it has excited very just alarm, will never be cured until public opinion, rightly instructed, demands a change in the state constitution, which shall restore power to the people by giving them in the state, as they have in the Federal Government, a single responsible head to whom alone they may look for the remedy of grievances, and upon whose head the whole power of public opinion may be brought to bear."—P. 329, 330.—Nordhoff, 113 N. A. Rev. (1871.)

Touching this desire to have all branches of administrative service filled by popular election it is pithily said in "How we are Governed": "It looks sometimes as if the people wished to control everything, even the very things they have committed to their officers, and have forgotten that in our Government they are not the power itself, but only the sources of power."—(By A. L. Dawes, p. 246.)

61. As opposed to the incongruous method of election to offices, sagacious men have preferred the better plan of choosing subordinates or assistants which prevails in everyday life.

Mr. Godkin (now editor of the "Nation") says "the true cure for the defects in the present system is the adoption of the methods which are found successful

in private business; 3 Lalor, p. 24. To the same effect Mr. Whitridge, 1 Lalor, p. 155.—Mr. Nordhoff writes thus, "the business of a Government does not differ in this respect from that of a merchant or a railway company; and no merchant could successfully conduct his business if his clerks, bookkeepers and porters were appointed and removable, not by himself, but by his customers. "Politics, etc., par. 92." In the same strain Mr. David Dudley Field, advocating the appointment of judges by the chief executive officer instead of by popular election, says, "turn the eye to the secular employments of life. Run the eye over the banks, the railways, the steamers, the manufacturing corporations, and other associations great and small, by the work of which we build our houses, furnish them to our several tastes, and satisfy our wants night and day. I speak of the enterprises half public and half private, which are expressly authorized and controlled by the state, but not manned by it. I mention these instances to show that popular election is not the general rule in human society. What citizens want is the ultimate sovereignty, and a ready means of exercising it in case of need. The ultimate sovereignty rests in the body of the people. That does not imply that individuality should be crushed out, or that all offices or even most of them, should be filled by popular election."—1 Scots. Law Times (1893) p. 222.

Another quotation from a small book but one of uniform excellence, may be also permitted at this point: "It is as though the stockholders of a great railroad feared to trust their superintendent, or to give him the power to appoint his officers and manage the road; but tried instead to keep the business in their own hands. If accidents then happened, or losses befell the road, no one in particular would be blamed.

"The ordinary citizen cannot easily know the fitness for office of many candidates. He must choose by rumor and report, and sometimes unfairly. It is not desirable therefore to multiply the offices to be filled by general elections. There are many important offices now filled at haphazard by the vote of a multitude, which might more fitly be filled by the appointment of the executive, who would then be responsible for good appointments. All judges, sheriffs, and attorneys for the government ought especially to be chosen in this more careful way, rather than by popular elections." From "The American Citizen," by C. F. Dole, pp. 160-162.

62. If the right of appointment to these various state offices were given to municipal councils, the teaching of experience is that party predilections would in a new shape infallibly crop up. The vote for councillors would assume new importance if the right of patronage to remunerative offices was exercisable by the council. As in all like cases, the same voting organizations, such as the caucus, etc., would be put into operation; lines of party cleavage would supply obvious means for employing or adapting the machinery used in choosing representatives for the purpose of central government to the enlarged purposes of local government. As a consequence the proper ends of local government would be lost sight of, or would lose prominence in municipal elections. Appointments would still be made, having regard to party considerations; but it would be the particular party predominant in the particular county, and not the party predominant in the province at large, who would then exercise the right of local patronage. Where would be the gain of this to warrant a constitutional change in the manner of appointment?

63. For the sake of patronage, division on the lines of political parties would spread into the region of municipal affairs—where the party system is without pertinence—to the disparagement of good and honest local government. The mischief of this is discussed in passages quoted by Mr. Bryce in vol.

i. p. 160, extracted out of the able report from the New York Commissioners of 1876. And it had been long before pointed out by Mill in his "Representative Government," (1860) that the mere indirect political influence of town councils had led to a considerable perversion of municipal elections from their intended purpose, (*i.e.* to serve local needs), by making them a matter of party politics. (See Ed. of 1882 p. 79.) See also Bryce, vol. ii. p. 23.

64. There is another source of danger which ought not to be left out of account in the consideration of a change in the system of official selection. Where the party system prevails it seems inevitable that corruption should be fostered by holding out offices of emolument as the rewards of popular suffrage. Certain it is that the so-called "political assessments" have been the concomitant of elective offices, and it is to be feared that like results in Ontario would follow upon the introduction of a like system. This head of "Civics" is well handled by Mr. Whitridge in Lalor Cyclop. i., 152. The professional politician and his machinery working for illicit gain appears to be the inevitable outcome of multiplying elective offices, to which pay is attached, in constituencies so large that people know little of each other. See Bryce, vol. ii., pp. 67-73.

65. Then again comparing the advantages of choice made by the small body of cabinet ministers—seven or eight—with that likely to be made by the score or more of members who compose the county councils—on which side does the scale turn? It is well known that the sense of responsibility increases as you diminish the number of those charged with duties or trusts, while with the increase of numbers you decrease the safeguards of responsible action. In the handful of picked men at the head of affairs you have presumably the best that the country can supply—you have presumably that combination of legal or constitutional knowledge, business experience, general sagacity in public affairs, and intelligent apprehension of the methods of administration, coupled with a sense of the gravest responsibility, which will lead to the filling of public offices by the appointment of fit and competent men. The local councils, however qualified for county work are, (as Stuart Mill says), "watched by, and accountable to, an inferior and a more limited public opinion, than that which surrounds and admonishes the highest authorities at the capital."

66. Although the election of administrative and judicial officers is commonly spoken of as "the American system," yet the American method as found in the National Government of the United States is all in favor of executive appointment. The so-called American system is the unique peculiarity of the several States of the Union, wherein no attempt is made to secure any uniform administration, and where each state is in effect but a larger municipality. But when one turns to the National Government, the head of the executive—the President—is both political and administrative chief, has the appointment and control of all subordinate officers, and so directs an efficient and harmonious administration.—Goodnow, i., 70, 137,

67. Be it remembered then, in estimating the effect of American example, that two systems exist side by side in the Federal Government on the one hand, and in the States or Commonwealth Governments on the other, and that the principles of central executive control in matters of public administration, which obtain in the Federal Government of the United States, are in substance those which prevail in England and Ontario. As to the merits of the two, consider the appraisement of one well-acquainted with both; "The executive department, from its functions, demands a large number of officials reaching into the smallest political division of the country, moving in direct contact with the people, and at the same time demands a high degree of accountability, for the

trusts are important and easily abused. For these reasons, to appoint all executive officials (except the chief executive officer) is better calculated to secure an efficient service, than to elect by popular vote.

"That the principle in force in the executive department of the Federal Government is the only true one cannot be doubted, although it has often been abused for party or personal reasons. Public appointments should be made on the sole authority of those to whom directly or indirectly the holder of the office is subordinate. And in respect to responsibility the Federal Executive furnishes a model worthy of all imitation." Ford, "American Citizens' Manual," part i. pp. 118 and 120.

68. The reaction has already set in in many of the states, and especially so as regards large centres of population. There is a general concensus that it behooves the commonwealth to strengthen the executive power by concentration. For this purpose legislation is sought so as to reform existing methods of municipal government, by centring appointing power in, and thereby affixing all administrative responsibility to, the chief magistrate of each city.—See City Government of Boston, 5th series, Johns Hopkins Studies, p. 53.

Dillon says "experience with us has demonstrated the necessity of more power, and more responsibility in the executive head of our municipal institutions," and he suggests that this head should have the sole right to appoint, and unrestricted power to suspend subordinate officers.—Municipal Corporation, paragraph 73, p. 31.

So it is insisted on, as the grave fault of State Constitutions, that they interfere with the power of the Governor to appoint his subordinates in the executive department, and this weakens responsibility and causes confusion in the government.—Nordhoff "Politics for Young Americans," paragraph 424.

Paragraph 69. The whole field under investigation has been surveyed with wonderful prescience by John Stuart Mill, and his words have been commended by Americans as pointing out the better way of administrative management. From an author quoted by Mr. Bryce as of authority, W. C. Ford, the following passage illustrates what has been said: "There can be no question that one of the most prolific sources of official corruption and incompetency lies in the multiplication of elective offices, and herein consists one of the great distinctions between national and state offices. The democratic doctrine is that all officers should be chosen by the people, and it is often added, should hold office for short terms. But the people may fill offices indirectly by vesting the appointment in some elected officer, and no violence is done thereby to the democratic doctrine. In fact when closely examined the application of a system of elective officers is of very limited scope, and especially with regard to executive or administrative officers." . . . Mr. Mill, in his work on "Representative Government," recognizes the true principle that should govern the filling of executive offices. "A most important principle of good government in a popular constitution is that no executive functionaries should be appointed by popular elections, neither by the votes of the people themselves, nor by those of their representatives. The entire business of government is skilled employment; the qualifications for the discharge of it are of that special and professional kind which cannot be properly judged of, except by persons who have themselves some share of these qualifications or some practical experience of them.

. . . . All subordinate public officers, who are not appointed by some mode of public competition should be selected on the direct responsibility of the minister under whom they serve. . . . The functionary who appoints should be the sole person empowered to remove any subordinate officer, who is liable to removal, which, for the greater number, ought not to be except for personal mis-

conduct." "Our Citizens Manual," i. 130. Let this be supplemented with a further pertinent citation from Mill: "Local business has its executive department. With respect to this the same question arises as with respect to the executive of the state. The principles applicable to all public trusts are in substance the same. In the first place each executive officer should be single, and singly responsible for the whole of the duty committed to his charge. In the next place he should be nominated, not elected. It is ridiculous that a surveyor, a health officer, or even a collector of rates should be appointed by popular suffrage The popular choice usually depends on interest with a few local leaders, who, as they are not supposed to make the appointment, are not responsible for it; or on an appeal to sympathy founded on having twelve children, and having been a ratepayer in the parish for 30 years. If in cases of this description election by population is a farce, appointment by the local representative body is little less objectionable. Such bodies have a perpetual tendency to become joint stock associations, for carrying into effect the private jobs of their various members. Appointments should be made on the individual responsibility of the chairman of the body, let him be called mayor, chairman of the quarter sessions, or by whatever other title. He occupies in the locality a position analogous to that of the Prime Minister in the state, and under a well organized system the appointment and watching of the local officers would be the most important part of his duty."—Rep. Gov. p. 116.

70. It is interesting to compare the testimony of Sheriff Mercer of Kent with the above estimate of the predilections of municipal councils. This passage has received the general approval of President Woolsey—a standard American authority—in his work on "Political Science," vol. ii.

71. Mr. Mill is referred to by Spencer Walpole as one of the most eminent expounders of representative government, whose ideas though elaborated in the closet, have been tested and confirmed by practical experience in Parliament. Walpole quotes from one of Mill's latest speeches in the Commons these words; "When a public body knows what it is fit for, and what it is unfit for, it will more and more understand that it is not its business to administer; but that it is its business to see that the administration is done by proper persons, and to keep them to their duties." This, though said primarily with reference to the legislative body, is equally pertinent to the relations between the electorate and the executive.—Todd's Parliamentary Gov't ii p. 136. Walpoles ed).

72. Passing briefly to some details; the present system in Ontario of apppointment, supervision and removal, is simple, uniform and economic in its working, as compared with the results which might be expected to follow upon a division of these functions between the localities, the judiciary and the central government, or any two of them.

73. Suppose a composite plan elaborated whereby the county councils or the people of the county, should fill the offices, and the Government inspect the work done and dismiss of its own motion, with or without the intervention of the courts; it is likely that many occasions of friction would arise between the local and the central power, engendering mutual suspicion and ill-will.

74. The unified management of the civil service, to be found in Great Britain and her self-governing dependencies, is in strong contrast with the administrative dispersion peculiar to the American State Governments. In the American State, the choice of persons depends on the popular vote; after this, the direct popular element disappears. That great part of the appointing power

which regulates compensation is exercised by the legislature, or is remitted to the elected county board of supervisors, or commissioners. The official duties are defined by the legislature, descending into minute details, and if the salaries are dealt with by this body there is frequent recurrence to the subject. Executive control is notable by its absence; the supervision, if any, is by the same county board, and not by the state. In cases of grave dereliction of duty, the courts are open for impeachment, and in some instances the power of removal or suspension (for cause) is exercisable by the Governor as Chief Executive—whose action, however, is subject to judicial review.

75. Besides this, all the procedure pertaining to contested elections must be invoked, in case the right to hold the office in the first place is challenged. This cumbrous state organization is unique, and does not appear in the National Government which conforms to the English model.

76. Manifestly more complicated and expensive in its working is this machinery of appointment and removal, than the comprehensive simplicity of action by the "Governor in Council" in Ontario. Therefore, if the localities are to select state officers, care must be taken to provide for the proper supervision of their work, and for dealing with them in case of personal or official misconduct. Nevertheless, despite all precautions to safeguard public interests, wherever authority is divided in the matter of appointment and discipline, considerable impairment of the service may be expected.

77. Resort to the elective system is not advocated on the ground that better officers will be obtained. Putting it even on the lowest ground, that the duties of many officers call for no special ability, but may be done by honest men with average business aptitude, this class of public servants has been obtained by executive appointment, and more can not be expected from any substituted agency. Nor will more efficient service be rendered than is now secured by governmental inspection and supervision. But it is said that better economic results will be secured, by cutting down the expenses of office and the income of the officer, if the patronage is in local hands. Parsimony, however, is not economy. Whatever adjustments in regard to the financial aspect of the public service are called for by sound policy, these can better be made by the head government, than by relegating this matter, with plenary power, to the fluctuating standards of the two and forty counties of Ontario. This matter of fees and salary is part of the proper work of the Government, and even in the States, it is never left to the people, but is more and more being defined by legislative authority. British and colonial constitutional usage is well defined by Mr. Todd: "Ministers," he says, "are directly accountable for maintaining the public service in a proper state of efficiency, for selecting qualified persons to fill all subordinate offices under the Crown, for awarding to such persons adequate remuneration and for granting them protection against oppression or dismissal upon insufficient or unwarrantable grounds. The authority that appoints to office is necessarily competent to dismiss any inefficient or untrustworthy servant. It is also the proper judge of their qualifications, and of the remuneration they receive." Parliamentary Government i, 401. And again: "as with the appointment and dismissal, so with regard to the remuneration of public employees, it should be left to the Government to determine the amount of pay to be allotted to all public servants of whatever grade or position. Those who serve the Crown should look directly to the Crown for compensation and reward. It is the peculiar duty of the executive government, and of the heads of the several departments, to enter into the particular and minute considerations by which the rate of salaries, the annual increments and the prospect of promotion are adjusted."—*Ib.* p. 396.

78. In some instances, particularly in the case of fee-producing offices, the compensation is fixed or regulated by the Act of the legislature; but whether by that body or by the executive council, more just and equal results will be arrived at, than by leaving the amount to the varying standards of the different localities.

79. Some objectionable incidents of executive patronage have been adverted to in the evidence; these if inherent in the system, are not peculiar to it: but perhaps they may be remedied without resort to radical expedients, which may turn out to be not even satisfactory equivalents.

80. It is said that offices are kept vacant for long periods, which indicates either that they can be conducted without filling the vacancy; or that they are kept open for partisan purposes. The remedy is to fill vacant offices within a fixed period after the death or removal of the former incumbents, and to have such vigilant oversight of the nature and extent of the several branches of service, as to ensure sufficient work for the officers, and sufficient officers for the work.

81. It is said that vacancies are filled by the appointment of members of the Legislature, who are influenced by the prospect of obtaining this reward, and so conform to the policy and wishes of the ministry. One remedy is to prohibit the appointment of any member to office while he is a member, and for a certain period after the electoral term has ceased for which he has been elected.

82. It is said that appointments are made at the instance of defeated and discredited candidates of electoral constituencies, when the one defeated is of the same party as the ministry in power. This usage is recognized as a constitutional exercise of executive patronage and it is difficult to propound a satisfactory substitute. But there is a suggestive memorandum of the House of Commons in 1835, with reference to the character and qualification of those who should be put into the commission of the peace, that may be adverted to in this place:

"The Commons consider it to be of the highest importance that such (local) information should be publicly given by persons acting avowedly, and therefore responsible for their recommendation; that if such information be not so given, it must necessarily be sought for through private and irresponsible channels, and the persons recommending will be freed from the salutary control of public opinion, and may be swayed by undue preferences; that the town councils freely elected may safely be presumed to have the deepest interests in the impartial administration of justice, and in the due enforcement of law within their respective communities, and there is therefore no reason to apprehend that they will submit for His Majesty's approval the names of improper or undeserving men; that should the very improbable occurrence take place, it would be the duty of those who advise the Crown to set aside the recommendation of the Council and to require a new and revised list. (All this) with a view both to the responsibility of those who recommend; to the trustworthiness of those who are recommended, and to the right and authority of the laws, which cannot be separated from the character of those by whom the laws are administered." (See Glover Municipal Corporations p. 472.) Such a scheme adapted to county councils would mean the fair and honest submission of a list of suitable names, irrespective of politics or religion, so as to give some latitude of choice to the executive. This is not dwelt upon further, for it may not be within the range of practical politics. The opinion of the Hon. T. M. Cooley communicated orally to one of the commissioners is not favorable to the nomination of appointees by the county council,

from which the executive might appoint; because it would lead to intriguing, or to the power passing into the hands of a ring or clique, or it would lead to friction and deadlock between the councils and the government. In his view, if the executive is to appoint, it should take the entire responsibility. (See also the testimony of Dr. Bourinot). This matter, however, in its relation to constituencies opposed to the ministry of the day, is not of fundamental importance.

83. Again, it is said that office holders bestir themselves actively, in canvassing and electioneering, in view of provincial elections. While it is not desirable to debar them from the exercise of the voting franchise, the public interest will be promoted by the suppression of their aggressive interference, whether for or against the government of the day. For, on the one hand, it is incongruous that officials should manifest active opposition to the existing government under which they serve; and, on the other hand, it is highly inexpedient that they should display a spirit of strenuous partisanship in favor of things as they are; inasmuch as it becomes public servants to serve honestly and faithfully whoever may be their official superiors. Circular letters addressed to these officers should be sufficient to accomplish this result without the need of special legislation and the imposition of penalties. Any breach of this strict neutrality should be dealt with as misconduct, warranting dismissal from office.—(See Todd Par. Gov., i, 390.

84. The present system is also stigmatized as bureaucratic; a term meant to express unnecessary officialism radiating from the central authorities. But the point under consideration is whether the best interests of the country are not served by a force of permanent officers appointed by the executive, to administer law and justice in the localities. The mischief arises, if the right of patronage is exercised in a spirit of mere partisanship—when appointments are made as a return for political services, without reference to the ability, knowledge, and fitness of the persons appointed. Now, for the offices under consideration—many of which call for special skill, and others for knowledge of details, which long practice gives—even Americans admit that the so-called "bureaucratic" method is most desirable.—(See Goodnow, vol 2, pp. 12, 13 and 59.)

85. Finally, change is advocated on financial grounds; let officers who are paid by the county be appointed by the county; or, if the counties had the appointment and the payment there would be a great diminution of official expense. As to the first position, tables have been prepared and will be found in the latter part of the report which demonstrate its unsoundness. None of the officials in question are paid by the counties; registrars are paid by those who own and deal in the lands—many of whom are non-residents; the fee paying constituency is by no means co-terminous with the ratepaying or voting inhabitants of the municipality. As to all the other officers in question: the contribution of payments which is derived from the counties is a little over one-sixth of the aggregate receipts; the provincial government contributing about two-sixths, and the parties or litigants directly served paying the other three-sixths. These parties or litigants, of course, live everywhere, in the province and out of the province.

86. As to the second financial ground; it would not be wise to intrust the payment of public officers to the hands of local authorities. Government is proverbially an expensive thing, but the cost of it is only one factor to be considered. To distribute the offices in question among the localities would lead to administration on the lines of a narrow utilitarianism, which, while looking merely to a reduction of cost, would overlook broad and statesmanlike considerations. Each

local area would be self-regarding in the highest degree, and would not feel the responsibility of making contributions of good government to the community as a whole. This has been discussed by one who has much studied the subject, and who, comparing the two systems,(a centralized government paying its functionaries, with an uncentralized government pursuing the same policy), finds the intrinsic advantage in respect of the cost of administration on the side of the former. Where the government is centralized the distribution of the administrative functions is orderly; it is therefore comparatively easy, without harming the efficiency of the administrative system, to cumulate functions in one and the same functionary; and since the regularity and comparative simplicity of the system lay it bare to discerning observation and criticism, it is subject to the purifying operation of an intelligent public opinion. Where the government is not centralized the organization of the administrative system is crude and confused. There are no facilities for cumulating functions without damage to its general efficiency, and since its disorderly structure covers it with mystery, it is impervious to the observation and effective censure of the intelligent portion of the general public. In respect of its intrinsic tendencies, such an administrative system, or rather administrative chaos, is a teeming hotbed of profusion and corruption.

87. This passage, condensed from an article by John Austin in the *Edinburgh Review* of January, 1847 (p. 248), is singularly suggestive of the deterioration which ensued in the comparatively uncentralized administration of the American States, and affords generally a warning against leaving our present political methods to seek the elusive remedy of greater economy, by relegating the functions and responsibilities of general government to the multiplying municipalities.

PART II.

Having in the preceding pages set forth some general considerations applicable to the large question of municipal selection of officers, as compared with the system of executive appointment, it is now proposed to offer some details concerning the several offices as found existing in various English-speaking communities. These are to be regarded rather as suggestive than as exhaustive of a subject which admits of indefinite expansion.

Clerk of the Peace.

1. Of the enumerated officials the Clerk of the Peace is historically one of the oldest officers in Ontario, the sheriff being the other. Both were appointed by the Crown in connection with the courts provided in 1788 for the old districts of Western Quebec, and were continued after the setting apart of Upper Canada, as officers and ministers of justice in the new provincial courts. The clerk of the peace was so called because of his having the custody of the records of the courts of sessions of the peace in each district or county. His functions in this line of duty have been continued to the present day, whereas in the United States the name has disappeared, though the corresponding duties are usually discharged by the county clerk—an important officer in that system. The manner of disappearance may be traced by reference to the State of New York. By ordinance of May, 1690, inferior courts of common pleas and courts of general quarter sessions were appointed to be holden in the several counties of the province of New York. These courts of common pleas were called county courts, and the clerks appointed for them by the colonial governors in course of time

acquired the name of county clerks. The same officer was also clerk of the sessions, and he had also, by virtue of his position, the duty of recording deeds as "register." The name of office which prevailed (no doubt from its brevity), was that of "county clerk," and to this day in that state he fulfils the various offices of clerk of all courts held in and for the county, *i.e.*, circuit, oyer and terminer, county court, and court of sessions, and the special term, and is also recorder of deeds. In many states he is clerk or secretary of the county board of supervisors or commissioners. This officer, at first appointed by the governor, was afterwards made elective by the people. In many cases his cumulated duties were divided among other functionaries called clerks of circuit, (or other courts), and register of deeds—all being also elective.

2. In the Canadian system, however, the office of clerk of the peace has been kept intact. Duties at first performed by him were, with the development of institutional life, transferred to the town clerk and to the clerk of the district courts (46 Geo. III., c. 5; 48 Geo. III., c. 14; *Baby* v. *Baby*, 5 U. C. R. 570; the overlapping of functions is noticed by the judges in the tariff framed by them in 1845). And later on the professional character of his services was emphasized, when upon the creation of an office for the public prosecution of crime, the duties of that office were as a rule entrusted to clerks of the peace under the name of county attorney. One necessary qualification for either office is that the person shall be a barrister of three years' standing.

3. It is noticeable also that though the course of municipal reform in England was to a large extent followed in Upper Canada, yet the provisions of the Municipal Corporations Act, 5, 6, Wm. IV., c. 76, s. 103, were not adopted here That section empowered the council of every borough, having a court of quarter sessions, to appoint a clerk of the peace during good behavior. This was an innovation, for prior to this the office of clerk of the peace had appertained to counties and not to boroughs. The change itself was an anomalous one, and it is matter of commendation that Canadian statesmen did not follow that suggestion of change by extending it to the county system of municipal government. It is pointed out in English decisions that the clerk of the peace of a borough, though appointed by the town council, is not an officer of that body—he has no corporate functions to perform; his duties are those of a queen's officer entirely independent of the corporation, and he is not removable by the fluctuating and uncertain decision of a popular assembly for misbehavior in office. (*Reg.* v. *Hayward*, 2 B. and S., 585.) It may further be noted that there has been a different institutional development in England as to the clerk of the peace in counties by the Local Government Act of 1888. A new elected body is thereby created called the "county council," (in this regard, however, anticipated in Upper Canada). The clerk of this body is to be also clerk of the peace, and he is to be appointed by joint committee of the county council and of the justices in quarter sessions assembled, by whom also he may be removed. In amalgamating the offices of clerk of the couty council and clerk of the peace, the British Parliament has done what had been previously done in some states of the American Union, but has made a new departure in the method of appointment. This was doubtless suggested by the new combined office, for under the urban system the town clerk was appointed by the council, (just as in Upper Canada the county clerk was appointed by the county council), and a clerk of the peace was appointed by the *Custos Rotulorum*, and failing that by the justices in quarter sessions. Combine these offices and you naturally combine the appointing powers, hence the joint committee of council and sessions.

4. Altogether there is in Ontario a distinctive home-growth character attached to the present office of clerk of the peace, as coupled with that of county attorney, which may be regarded as an experimental contribution to modern administrative government. In the manner of appointment by the Governor-in-Council to this joint office no change should be made. The office is quasi-judicial, and calls for the exercise of good judgment and sound discretion in its possessor

COUNTY ATTORNEY.

5. This was a new office in Upper Canada, originating in 1857 by the Act for the appointing of county attorneys and for other purposes in relation to the local administration of justice. (20 Vict, c 59.) It was probably suggested by the system of prosecuting attorneys, which had in most of the states of the Union been found to work beneficially in protecting individuals from frivolous or malicious prosecutions, as well as in the prosecution of offenders with greater efficiency where the incentive to private vindication of the criminal law was not strong. France appears to be first in the field in promoting this modern method of public prosecution. Thence it passed to America, then to Canada, and lastly it has appeared in England, where it has been evolved by gradual stages after the fashion of institutional changes in that country. This will appear from the following synopsis of passages from Maitland's "Justice and Police." English law has left the prosecution of criminals very much in the hands of the public. But now a state of transition is reached, and prosecutions are coming more and more under official control. There is hardly yet any one permanent public department charged with a general duty of enforcing by legal proceedings the claims of the Crown or of the executive. But such a department has been slowly coming into existence—that of solicitor to the treasury. Many classes of prosecution are now directed by the treasury solicitor; an assistant of his, or a county solicitor employed by him for the occasion, would attend the magisterial investigation, prepare the evidence for the trial and instruct counsel. In 1879 a measure was passed by which a director of public prosecutions was to be appointed by the home secretary, paid by salary. In 1883 it was enacted that the treasury solicitor should be director of public prosecutions. Subject to regulations, he takes up prosecutions as he thinks fit. He and his staff will see to London cases; but it seems intended that country cases shall be managed by agents, local solicitors, employed for the occasion, and paid by the piece. The choice of counsel is left to the attorney-general. It appears that he is intended to take up cases of difficulty and those in which there is reason to fear a failure of justice, pp. 147, 149. This book, published in 1885, brings the matter down to that date, and so it remains practically to the present day.—(See Porritt, "The Englishman at Home," p. 115, 1893, and 38 Sol. J., p. 801, Oct. 20, 1894.)

6. While the county attorney of Ontario is appointed by the Lieutenant-Governor in Council, the district or prosecuting attorney for the counties of the most of the states of the American Union is elected by the people, whereas the like officer of the national Government, who acts as attorney for the United States in the different federal districts, is appointed for a term of four years by the President and senate. In some states he is appointed by the governor. (American and English Encyclopædia of Law, vol. v., page 714.) In the states as here is a quasi-judicial officer, and stands indifferent between the accused and any private interest.

7. Colonial aptitude for amending the administration of law in advance of the mother country is shown in this very office. In the examination of the law clerk of the treasury before the select Parliamentary Committee on

Fees in 1850, he expressed the opinion that there should be in every county a Crown prosecutor—a man whose independent business should be to look after the administration of criminal justice, and who should be upon a fixed salary.—(Evidence of Richard Hawkins, par. 309.)

Sheriff.

8. This ancient officer of England was originally elected by the freeholders of the county, (subject, probably, to the royal approbation). But it was found as the inhabitants increased, these elections grew tumultuous, and then the selection was made by the Crown alone. Such was the manner of appointment at the date of colonial establishments in America. Retained in all the British colonies, it has been replaced in the states of the Union by popular election, except in Rhode Island. In "Murfree on Sheriffs," par. 7, New Hampshire is also excepted. This is an error, for by the constitution of that state, art. 70, the sheriff is elected by the inhabitants of the town in the several counties. In Rhode Island the sheriff is elected annually by the General Assembly in Grand Committee, as are also the clerks of the supreme court and the common pleas court for each county.

9. Everywhere the sheriff is an officer of dignity and responsibility He has the customary right of precedence in his county, but apart from all adventitious importance, the shrievality is an office of weighty trust. As put by Mr. Maitland, the sheriff has much to do which requires experience of legal routine. In particular, civil execution, (though less hazardous than it was a few years ago), is still risky work. If a sheriff does not obey a writ, he is liable to be punished in a summary fashion, for the High Court keeps a tight hold over him. Again, he is civilly liable if he does not seize what he ought to seize, or seizes what he ought not to seize, as *e.g.*, the goods of a wrong person, and there are many rules to be observed as to when doors must and when they must not be broken, and so forth. Justice and Police, p. 71. In cases of execution the sheriff is now greatly protected by the provisions made for interpleading, in cases where the goods are claimed by a third party; but he is still the chief executive functionary in the locality, having from the Crown "the custody, keeping and government in some sort of the whole county committed to his charge and care" (Coke). Atkinson says the sheriff's ministerial duties are at once numerous, delicate and important. They consist chiefly of summoning juries for the trial of issues, of attendance upon courts of justice, executing the judgment of those courts, and conducting elections of members of parliament (Sheriff Law, p. 74) Having to keep securely in confinement all prisoners committed to his charge by civil or criminal process, he has for this purpose jurisdiction over the county prisons, and is in effect jailer by virtue of his office.—(Murfree on Sheriffs, para. 40).

10. Under the Municipal Act of 5, 6 Wm. IV., c. 76, s. 61, there is a provision made for the election of sheriff by the town council; but the status of such an officer is not that of the sheriff of a county. The local sheriff is merely tantamount to the city bailiff or high constable; he is not the proper officer to execute process from the superior courts which is to be done by the sheriff of the county; Granger-Hamlin; 3 Scott 393; 3 B. M. 64. This is the general doctrine applicable to all urban sheriffs elected under that Act; they are merely corporate officers.—(Rawlinson Municipal Corpus, p. 262.)

11. As contrasted with the elective method pursued in the several states, let it be observed that in the National Government the United States

marshals, who are neither more or less than federal sheriffs, are appointed by the joint action of the president and senate. These are ministerial officers of the federal courts, conservators of the peace, *quoad* the United States, within the limits of their respective districts.

12. In Canada the Dominion Government has not appointed this class of public officials but has been willing to adopt provincial sheriffs as Dominion officers in the execution of process of the Supreme and Exchequer Courts of Canada. (R. S. Can., cap. 135, ss. 15, 83, 90 and 105.) If sheriffs become merely municipal functionaries, elected by the counties, it is to be considered whether either province or Dominion would be content to accept the appointees of local corporations for provincial or federal purposes—and if not so content, whether the expenses of Government would not be increased by the maintenance of another set of public officers.

13. The condemnation of the elective system, as applied to officers and ministers of justice, is nowhere more incisively put than in the following passage from an American author of repute on constitutional topics: "Take another example of the office being made elective when all theory is against it. The sheriff is as much an agent of the state, as distinguished from local action, as is a federal internal revenue collector, an agent of national as distinguished from state action. In either case to secure a higher efficiency of government, their action is confined to a limited territory." "That officer," the sheriff, is (says one of our clearest writers) "the lieutenant of the governor in a county. He is properly a part of the state, and not of the local or municipal administration. He is the custodian of the peace of the county; it is his duty on order of the governor, or without if the case is urgent, to supress unlawful assemblages, to quell riots and affrays, to arrest and commit to gaol, if need be, those engaged in the disturbance of the public order." Yet the appointment of this officer has, in a majority of the states, been taken from the governor, and he is elected by popular vote in each county; being thus in form a county, but in functions a state officer It is true that this incongruity is in some states lessened by limiting the sheriff to one term of office, or by prohibiting him from holding office for two successive terms. For, to illustrate, let it be supposed that the sheriff is called upon to enforce in his county a measure to which the inhabitants of the county are hostile—will he act with as much vigour when he knows that his remaining in office depends upon his ability to retain the goodwill of the electors of his county, as if he held his office independently of them? Or could he refrain from using his official position and influence to secure a re-election? These are questions which are only in part answered by limiting the term of office. That the system of electing sheriffs and like officers, such as coroners and district attorneys, does weaken executive responsibility is unquestioned—though the responsibility of the governor is very often recognized (as in New York State) by giving him power to remove such officers. (From the "American Citizens' Manual," by Worthington C. Ford, part i., p. 123,) the quotation from the other political writer is from an article by Chas. Nordhoff, in the *N. A. Review*, Oct. '71, a notable paper also commended by Judge Dillon in his book on "Municipal Corporations," p. 32, note 4th Ed., from which a lengthy citation has been already given.

14. From a very different source another quotation may be pertinently introduced here. A peculiarly well-informed observer in New York State wrote recently to the English Howard Association as follows: "Our jails at present are under full control of the sheriffs; and the sheriff in each county is always, or nearly always, the leader of the dominant political faction. He is paid

by fees, and in some counties these fees amount to many thousand dollars a year for each sheriff. So you will at once see that in over 60 counties (in New York State alone) the shrievality forms a powerful political machine, with places that furnish a sufficient income to make it worth the while of unscrupulous and greedy politicians to spend money to get them. Until a national change in the appointment and functions of American sheriffs and justices takes place, there seems to be little prospect of the needful radical improvement in the thousands of ordinary local jails. It is to be particularly observed that the chief officers of the American state prisons, as distinguished from those of the local jails, include many very superior men and women. It may be remarked that in the British colonies, and especially in Canada, Australia and New Zealand, the local jails are in general far superior to the similar class of prisons in the United States." From "Penological and Preventive Principles," by W. Tallack: London, 1889, pp. 95, 96. Let it be said in explanation of the above contrast between local or county gaols, and state prisons, that the former are under the supervision of elective sheriffs—the latter under the control of the superintendent of state prisons, who receives office at the hands of the governor and senate. This appointive officer has the direction of prison affairs and selects the keepers and other assistants therein, and his independent status offers a suggestive contrast to that of the elective local sheriff who seeks to propitiate the popular vote.

Registrar of Deeds.

15. It is remarkable that the general registration of deeds, though it has never gained foothold to any extent in England, has yet prevailed as a universal law in all her American colonies. The advantages of registration are so obvious in a new country that it commended itself, and was adopted at the planting of every settlement. It was one of the earliest laws of the colony of Massachusetts that all mortgages, bargains, sales of land, etc., be recorded, and that the "clerk of every shire court shall enter such grants, with names and dates." (1640). The recorder of deeds was thus early linked officially with the clerk of the records of the court—he being an officer appointed originally by each court.

16. Many attempts were made in England to establish a public registry, of which the most notable was during the Commonwealth. The draft for an Act was published in 1653, attributed to Sir Matthew Hale, providing for the establishment of a county registrar all over England and Wales. His plan was that the justices at the general sessions should provide some convenient place for a registry, and should also name six honest, able and understanding persons to the grand jury, who should, amongst their presentments, give up the names of two of the six, of whom the justices should elect one to be registrar of that county, and in like manner should proceed to elect a new registrar on death or removal.—("Somers' Tracts," vol. vi., p. 91). In 1703 a registry office was set up in the west riding of Yorkshire, and three years afterwards one in the east riding. In 1708 the same provisions as to registry were extended to Middlesex, and again in 1735 to the northern riding of York. In Yorkshire the "register" was elected by ballot of the freeholders; in Middlesex, being at the headquarters of law, it was managed by officers or masters of the courts. In 1884 the offices in Yorkshire were united by the Yorkshire Registry Act of 47-48 Vict., c. 54, by which the county authorities were authorized to legislate by by-laws as to the manner in which the offices should be kept, and were empowered to appoint the registrar, subject to the approval of the Lord Chancellor. The registrar was to be a barrister of seven years' standing, or a deputy officer for five years. Permis-

sion was also given to the local authorities to commute as to the fees received, and pay instead a fixed salary to the registrar. The Middlesex registry was taken over by the Government in 1892, so as to be managed in connection with the officers of the law courts at Westminster. Yorkshire represents the most complete application of the system in England, but it is of merely local scope, and may therefore be properly relegated to the control of local authorities in that county. It was at the first instituted as a means of security for investments, and at the solicitation of the magistrates, who were almost exclusively possessed of the qualification (100 pounds a year) to vote in the election of registrar.—(See Evid. of T. C. Atkinson before the Campbell Commission on Registration in 1830, App. p. 79.)

17. In Ireland and Scotland, however, a complete and effective scheme of registration for the whole country has long been in force, dating in Ireland from 1708 and in Scotland as early as 1617. In Scotland registries were, from the first, localized in counties and boroughs, with a general register at Edinburgh; and it is optional to register either in the general register for all Scotland or in the particular register for the district where the land lies. In Ireland one office was created in the city of Dublin to serve for all Ireland, the registrar and staff to be appointed by the crown. The Irish plan is thus of an entirely metropolitan or centralized character; whereas in Scotland, besides the general register at the capital, the statutes have fixed local offices, which are subject to the control of the principal keeper, to whom periodical returns must be made of the several books, and then the whole body of records is preserved at Edinburgh for public inspection and search.—(Evid. of C. Balfour, appendix to second Report of Real Property Commission, 1830.)

18. As to the chronology of this office in Upper Canada, a few references may be made. Since the erection of the registry office in 1795, the registrar was always appointed by the Governor, and his office kept distinct from that of any other branch of localized administration. At first, on account of the scanty population, the registrar was allowed to be the incumbent of other offices. (35 Geo. III., c. 5.) One Hotham is found holding the offices of registrar of deeds, clerk of the peace, clerk of the district court, and registrar of the surrogate (7 Vict., c. 38.) The office was for the county or riding, but afterwards small and sparsely settled counties were united for the purpose of registration. (9 V., c. 34, s. 34.) And again, large counties were subdivided, or separate offices were placed in cities in order to facilitate the transfer of real estate, and to minister to the convenience of the inhabitants. (22 Vict., c. 98, 1858.) This is also the rule in the states of the Union, that in counties where much business is to be done, there is more than one register of deeds.—(Fiske "Civil Government," p. 55.) By the Act of 1846 the registrar was allowed to appoint a deputy, and the hours of attendance were lengthened from 10 to 3. (9 Vict., c. 34.) In 1859 registrars of counties were relieved from disability to practice as attorneys or solicitors. (22 Vict., c. 36.) In an early statute it was provided that if the registrar was not discharging his duties aright he was removable by the Governor on presentment of the grand jury. (9 Vict, c, 34, s. 90.) Now, he and all other provincial officers are subject to government inspection, and are forthwith removable by the appointing power, when circumstances demand and justify this course.

19. The registration of deeds, etc., in Quebec and in the Maritime Provinces of Canada is on much the same footing as in Ontario—a public office for registration being as a rule in each county, with occasional subdivisions when the territory is large and the public interests would be served by readier

facility of access to the office. The plan pursued in Ontario (as in Upper Canada) finds strong sanction in the opinion expressed by the eminent jurist, Wm. Burge, for twelve years Attorney-General of Jamaica. When before the commissioner in 1830, he said: "though one office of registry has been deemed sufficient in the British West India Colonies, as well as in Scotland and Ireland, yet to ensure accuracy in registration, and facility in investigating titles, and to afford easy and cheap reference to it at a trial, there ought always to be a registry office in every county, and in very large counties there should be more than one office. It should be established in the town in which the assizes are held."—(App. p. 42.)

20. Chancellor Kent says that by the statute law of every state in the Union, all deeds and conveyances of land are required to be recorded (4 Com. 456). In some states, as New York, the record is to be made in the office of the clerk of the county (Rev. Stat. Registration pt. ii, c 11, s. 1.) In Wyoming and Colorado the offices of county clerk and registrar are combined. In Illinois there is a clerk of the circuit court, who is *exofficio* registrar of deeds, except in counties where the population is 60,000, and then a separate recorder must be chosen. A like provision exists in Nebraska except that the double office obtains only when the population is over 18,000. In Stimson it is put generally thus:

In all the states there is a land record office in every county, such office is kept by a special officer, called by various names in the different states, *e.g.* the registrar of deeds, or registrar of the county, or the recorder. Or the office may be kept (in other states) by the county clerk, or by the clerk of the superior Court for the county, or by the clerks of other courts, or by the judge of probate. See Stimson American Stat. law 1 p. 216, for the details.

But however the offices of county clerk, clerk of circuit or district courts, and registrar may be combined or separated, the office is an elective one and for a short term of years. The registrar is called a "county officer" and is dependent on the popular vote.

21. In the British Provinces and Ontario he is not so classed, but is a state officer appointed by the chief executive. In the Con. Stat. of Lower Canada the subject of registration is classed under Tit. 7 "Real Property and rights" and not under Tit. 5 which is "Municipal and Rural Matters," and so in the classification of the statutes consolidated or revised, of Ontario.

22. In cases where, as in England, the plan of registration is isolated and peculiar to one county, and therefore of local and limited application, it would appear to be right enough in principle to place the control of the office and officers under the county authorities of the locality, as a strictly municipal affair. But where there is a general system covering all the territory of a province or state, it becomes important to have the whole managed by one uniform system, so that there shall be no local variations as to procedure, fees, salary or responsibility. As pointed out by a witness (Jno. Wilson) before the commissioners of 1830, general registration is beneficial not merely to the local proprietors, but to the whole community; to the latter because more extensive means are afforded for the secure employment of capital, and because litigation will be diminished owing to security of title; thus it tends to improve and strengthen the general credit of the country.—(App. p. 47.)

23. Many writers in the States recognize the fact that the "register" as he is there called (after the old English fashion,) is properly a general public, and not a mere county officer. Thus in Ford's Manual, (a book cited by Mr. Bryce as of authority,) it is said "many of the officers that are found in the minor divisions of the state, such as sheriffs, coroners, registrars of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of

the court, district attorneys, and a large number of others are properly state officers, charged with a performance of a part of the state action, and the nature of their duties is not altered by the fact that they are elected by the inhabitants of the various districts in which they perform their functions."—(Part i, p. 45.) Another writer who has specially studied the subject of civil service in all its aspects, writes, "the keepers of land titles, as distinguished from the keepers of judicial records can in no sense perhaps be regarded as judicial subordinates, yet it seems plain that the same consideration which should govern the selection of the latter should also prevail in the selection of the former." The scope of his argument is that all such officers are not to be chosen by popular vote: (D. B. Eaton in Lalor "Cyclopedia of Political Science," vol. ii., p. 640.)

24. Prejudicial effects from the election of public officers are liable to permeate every part of the service of which they are in charge. Thus it is reported in the English Law Times of Dec. 2nd, 1893, quoting from the report of Mr. W. S. Paine, Superintendent of the Banking Department of New York State (1886), as follows with reference to registration: "The peculiar system of filling civil service appointments in the states opened another grave source of danger. The errors of careless clerks, holding subordinate positions in public offices during the brief reign of political favor, multiplied the defects and imperfections of a system easily liable to inaccuracy. Numerous errors were discovered in the accumulated multitude of indexes, and though in 1855 the Legislature appointed a commission to revise the records, yet many errors have been found in the corrected copies, and no further attempts in this direction seem to have been made since. This unfortunate inaccuracy is said not to be confined to New York County, but prevails in other populous districts, as Syracuse, Rochester and Buffalo."

25. Dissatisfaction has arisen in some counties in Ontario because the expense of repairing and maintaining the offices and vaults needed for registration purposes have been cast upon the county, while no surplus from fees has been received by way of recoupment. In other counties there is an overplus which, going to the municipality, may stand for more than the amount of county outlay. A desirable change would appear to be that the whole registry system should be so managed as to make it self-supporting, and not more than self-supporting. This is what is achieved in the Australian system of Torrens' "registration," and it is aimed at in the Irish statute. Provision is there made for regulating the fees by reducing or varying the amount, from time to time, to be paid, so that no greater fees should be charged than will amount to a sum of money sufficient to discharge the current expenses of the establishment when efficiently appointed (2, 3 Wm. IV., c. 87, s. 35). Some general method of supervision and regulation by the inspector of registry offices, with a view to adjust salaries and expenditures on some uniform basis throughout the different counties would answer all requirements, whether of the private landowners or of the public, represented by the municipality or the province.

26. In this view it would be well to change the management of the registry offices, so that all fees derived from registration, etc., should be applied to meet the compensation and expenses of officers and buildings, and that no surplus revenue should be derived or expected from this source. The management would then need to be in the hands of one body, and that the province, for two reasons: on account of the more efficient and uniform results to be expected from the action of one head, than if each county had autonomous power of control; and also because, in the event of any change being desired in the method of registration, by which titles should be more directly dealt with,

as under the Torrens' plan, such amendment would be more readily introduced under a centralized than under a distributed system.

27. Of all the offices under consideration, this of registrar of deeds is perhaps the one that may with less risk of undesirable results be delegated to county authorities. Yet it cannot be said that any satisfactory reasons have been advanced for such a change; nor does there seem to be any propriety in turning over to municipal bodies one department of public business which is of more than local moment.

Courts: Their Clerks and Officers.

28. The other officers to be considered may be treated of under the above comprehensive heading of courts, their clerks and officers. Apart from the officers of the lowest court, (the Division Court clerks and bailiffs,) the functions of other court clerks are in nearly all systems of English jurisprudence considerably interwoven.

Thus in Ontario the clerk of the County Court is also, by statute, deputy clerk of the Crown and Pleas in the High Court, and registrar of the Surrogate Court, in the county; and he is also, (if the county judge is local master,) deputy registrar—an office originally pertaining to the Court of Chancery. The local master is deputy registrar in all cases where the office of local master has not been consolidated with that of the judge of the County Court.

In cases where the offices of deputy clerk of the Crown and deputy registrar are held by the same person, he is styled local registrar. The registrar of the surrogate may be held by a distinct officer in all cases where the compensation of the clerk of the County Court and deputy clerk of the Crown (or local registrar) amounts to $1,600 per year.

In the county of York, it is to be noted, that the office of the clerk of the peace is distinct from that of the county attorney; and the office of clerk of the County Court, as well as that of registrar of the Surrogate Court, is distinct from that of the clerk of the Crown and Pleas.

29. There is in England the same plan of utilizing the registrar of the County Court, (a local organization as here,), by making that officer also district registrar of the Supreme Court for the locality, as provided by the Judicature Act of 1873, s. 60. These officers are all appointed by the judges in England.

30. In the American States the manner of combining the offices varies in the different states. Thus in New York state the county clerk is also clerk of all the courts held in and for the county, *i.e.*, Circuit, Oyer and Terminer, County Court and Court of Sessions and the Special Term; or in other words, he is clerk of the County Court and of the Superior Courts in the counties. In California the county clerk (who is elected for two years) acts as clerk of the Board of Supervisors, and as clerk of the District, County and Probate Courts, and attends Judge's Chambers. Deering's Code, para.; ss. 4,109 and 4,204.

31. In the National Courts of the United States it is noteworthy that the clerks are appointed by the judges; whereas in the courts of the different states the elective method by the people is the general rule, although in some cases as to the Supreme Court of the states the right of appointment to the clerkship is with the judges.

In the Supreme Court of the United States and the Circuit Courts, (Federal Courts in each of the nine great circuits into which the United States is now divided,) and in the District Courts of the United States, (which are now 65 in

number), the clerks are appointed by the several courts, except that the clerk of the District Court is *ex officio* clerk of the Circuit Court in each district. All the Circuit Courts of the United States have the appointment of their own clerks—the circuit and district judges concurring; in case of disagreement, the appointment is to be by the associate justice of the Supreme Court. (Kent Com., vol. i, 300, 308.)

Contrast with this the action of (*e.g.*) the state of Massachusetts. By the constitution of that commonwealth as originally established, it was provided that registrars of probate should be nominated and appointed by the governor, with the advice and consent of the council. That was superseded by the 19th article of the amended constitution, which requires the Legislatures to prescribe general laws for the election by the people of registrars of probate, as well as clerks of the courts of common law in each county.—See "Opinions of the Judges," 117 Mass. 104 (1875). But in this state there is an exception as to masters in Chancery; those are appointed by the governor, with the advice of the council, to hold office for five years and to be paid by fees.—(Pub. Stat. of 1882, c. 159, ss. 46 and 48.) There is also another singular exception in Massachusetts, that while clerks of the Supreme Court and Superior Courts are elected by the voters of the county, yet clerks of the Police and District Courts in the county are appointed by the governor, with the advice of the council. This District Court like our Division Court, is an inferior court and extends over part only of a county.—See *Com.* v. *Thatcher*; 121 Mass. 65 (1876) and Mass. Pub. Stat. 1882, c. 154.

32. A quotation from the 2nd edition of Todd may suffice as to the English and Irish practice. It is said "subordinate offices of the superior courts of justice in England are in the gift of the heads of the several courts, to whom such officers are responsible for their proper conduct. A different practice prevailed in Ireland, where, by ancient prerogative of the Crown, certain of these appointments were conferred by the Lord Lieutenant. But in 1871 this judicial patronage was conferred upon the judges, save only that the junior clerkships in the courts are now filled up by open competition."—(Spencer Walpole's Ed., vol. i p. 168.)

Local officers of the Supreme Court in England are all appointed by the judges, and receive fixed salaries, all fees collected by them being funded. Justice Act of 1875, s. 26, and Judicature Offices' Act of 1879, s. 15.

33. The Division Court was called at first the Court of Requests, which suggests its English derivation. The Court of Requests was the English local name of many borough civil courts, the origin of which rested on ancient charter or custom. These courts were under the headship of municipal judges locally elected, and were courts of petty jurisdiction, some of which were confined to suits where the debt or damage claimed did not exceed forty shillings. These domestic courts were continued by the Municipal Act, 56 Wm. IV, c. 76, with somewhat enlarged and more uniform jurisdiction. By the terms of that Act the town council was to appoint the judge and the registrar of the local court, except when the town clerk acted in that capacity. And the council was also to appoint such other officers and servants as were necessary for carrying on the business and executing the proceedings of the court. It was at that time anticipated that there would be a revival of local judicial institutions, (which had fallen into abeyance), but the creation soon after of the new County Courts by 9, 10 Vict., c. 95, with their more comprehensive jurisdiction and their moderate expense, practically superseded the old borough civil court.—Vine's English Municipal Institutions p. 187-8.

A few of these courts survive, and to them apply the provisions of the Consolidated English Act relating to municipal corporations, 45, 46 Vict., c. 50 (1882). By that statute the inhabitants of a borough, (*i.e.* a city or town to which the Act applies,) may elect a borough council, and this council may appoint a registrar and other officer of the borough civil court (s. 170)

This old-fashioned plan of local borough courts was transferred to the New England and New York settlements in the early days of colonization, and became the origin of their local courts with a jurisdiction coextensive with the territorial limits of the town.

34. Changes were made in the headship after the introduction of this local court into Upper Canada. The old Court of Requests was held by two or more justices of the peace. (32 Geo. III, c 6.) The jurisdiction was extended up to £5 currency in 1816 (56 Geo. III, c. 5), and in 1833 the court was put under the presidency of two or more commissioners appointed by the Lieutenant-Governor. (3 Wm. IV, c. 1) These officers were to appoint and remove the clerk of the court, and also the bailiff. After this came the final change as to judgeship in 1841, when it was enacted that the judge of the district court should also be judge of the (then) Division Court. (4 and 5 Vict. c. 3.) The judge was thereafter to appoint the clerk and bailiffs of the court (*Ib.* sec. 7.) So this continued till 1880 when these appointments were vested in the Lieutenant-Governor in Council (43 Vict., c. 3, s. 33.) In Canada the judges of all courts, high and low, are appointed by the Crown ; whereas in the States of the Union they are as a rule elected by popular constituencies of greater or less magnitude.

35. But the American method is reprehensible, even as to the lowest local courts, for the functions of these courts are not really within the circumscription of matters municipal, but are of public moment as agencies of the state. The matter from the American point of view is treated by the Chief Justice of Michigan (Campbell, C. J.), in The *People* v. *Hurlburt*, 24 Mich., 83, (1871). "The confusion existing on this subject," he says, "has arisen from the custom prevalent under all free governments of localizing all matters of public management as far as possible, and of making use of local corporate agencies whenever it can be done profitably, not only in local government, when it is required by clear constitutional provision, but also for the purposes of state. Thus the whole machinery of civil and criminal justice has been so generally confided to local agencies, that it is not strange if it has sometimes been considered of local concern. But there is a clear distinction in principle between what concerns the state, and that which does not concern more than one locality. . . The preservation of peace has always been regarded both in England and America as one of the most important prerogatives of the state. It is not the peace of the city or of the county, but the peace of the king or state that is violated by crimes or disorders. The prosecution is on behalf of the state. The trial is before the tribunals created and regulated by the state. The remission of punishment is by the governor of the state."

36. From the English point of view the matter is luminously presented by John Stuart Mill: "Of all officers of Government those in whose appointment any participation of popular suffrage is the most objectionable are judicial officers. While there were no functionaries whose special and professional qualifications the popular judgment is less fitted to estimate, there were none in whose case absolute impartiality and freedom from connection with politicians or sections of politicians are of anything like equal importance."—P. 106, "Representative Government."

And further he says, "Among the duties classed as local, or performed by local functionaries, are many which might with equal propriety be termed national, being the share belonging to the locality of some branch of the public administration, in the efficiency of which the whole nation is alike interested; the gaols for instance, most of which in this country are under county management: the local police; the local administration of justice, much of which, especially in corporate towns, is performed by officers elected by the locality and paid for from local funds. None of them can be said to be matters of local as distinguished from national importance. It would not be a matter personally indifferent to the rest of the country if any part of it became a nest of robbers, or a focus of demoralization owing to the maladministration of its police; or if, through the bad regulations of its gaol, the punishment which the courts of justice intended to inflict on the criminals confined therein, (who might have come from or committed their offence in any other district,) might be doubled in intensity or lessened to practical impunity. The points, moreover, which constitute good management of these things are the same everywhere; there is no good reason why police, gaols, or the administration of justice should be differently managed in one part of the kingdom and in another; while there is great peril that in things so important, and to which the most instructed minds available to the state are not more than adequate, the lower average of capacities which alone can be counted on for the service of the localities, might commit errors of such magnitude as to be a serious blot upon the general administration of the country. Security of person and of property, and equal justice between individuals, are the first needs of society and the primary ends of government; if these things can be left to any responsibility below the highest, there is nothing except war and treaties which require a general government at all. Whatever are the best arrangements for securing these primary objects should be made universally obligatory, and to secure their enforcement, should be placed under central superintendence."—*Ib.* 117.

37. At one period in the development of institutions there is found in Upper Canada the establishment of the local elective court. Thus in 1834 a court of record was given to Toronto, to be called the Mayor's Court of the city of Toronto, in which the mayor was to preside and the clerk of the council was to be clerk of the court (4 Wm. IV. c. 23, s. 80). But this judicial experiment did not take root, and after twelve years it was superseded by the Recorder's Court, with appointive head, (9 Vict., c. 70). These Recorder's Courts ceased in 1888-9 when by statute all their jurisdiction was transferred to the county judge, 32 Vict., c. 6, s. 10.

38. As distinguished from England, we have a distinctive system of local courts, (of lower grade than the English County Court), presided over by judges of legal capacity and experience, as to the essential constitution of which no change is contemplated. As to any change in the selection of clerks and bailiffs, if it were a question of reverting to the old method of the judges making the choice, as opposed to appointment or selection by the local bodies, the former is more conformable to modern English precedent. Here there is no doubt the complication that the judges are appointed by the Dominion, while officers of the courts are under provincial control; though this probably would not be a serious objection to restore the appointment of clerk to the judge of the County Court—with the approbation of the Governor-in-Council. Consequent upon this change the appointment of bailiffs might be left in the hands of the clerk, with the approval of the county judge. The only reason urged for such a change as this is the removal of some petty patronage from the hands of the

Government, for it is not suggested that any better officials would be obtained. In support of the present system the opinion expressed by the law clerk of the English treasury upon the select committee of Parliament in 1849 may be cited. He thought that the appointment of clerks of the County Court should be vested in the Secretary of State, and not in the judge, and said, "it does not work well generally because we have found that some inefficient and improper persons have been appointed, (*e.g.* by the judge)."—Q. 161.

39. No sufficient ground appears for handing over these offices to be filled by the municipalities. Any method of election would be attended with considerable expense relatively to the small revenues derived from the office. This expense would of course be obviated if the appointment were in the hands of the township council; but what likelihood in either event that the offices would be better manned or managed than if things remain as they are? Few complaints are made, and it appears that when complaints are made they are promptly investigated and if need be appropriate remedies applied by the provincial inspector.

40. Except as to judge's salary, (which is, however, payable to him as judge of the County Court,) the Division Court is self-supporting. That is, the clerks and bailiffs receive no more than the amount of fees collected by them as provided by law. This it appears is the general rule in the case of Justice's Courts in the United States on their civil side—(Cooley on Taxation p. 32 note).

41. The County Court in Ontario is an intermediate court analogous to the County Court in England. The characteristics of the English Court may here find a convenient place. The judge is appointed by the Lord Chancellor and must be a barrister of at least seven years' standing. The registrar is a solicitor of five years' standing, and is appointed by the judge with the approval of the Lord Chancellor. In populous districts there may be two registrars to execute the office jointly. It is not an inferior court, properly speaking, because it is a court of record and is regulated by statutory jurisdiction, (Ingor. Prac., p. 2).—The same status has been accorded to this court in Upper Canada *re* Lapenotiere, 2 U. C. R. 497.

42. The expense of maintaining the new County Court in England at first was borne wholly by the suitors, but it is now paid out of the public treasury, except the salaries of the ministerial officers which are paid out of the produce of the fees of the court; any deficiency has to be provided by parliamentary vote. 19, 20 Vict., c. 108 and 51, 2 Vict., c. 93.—(The latter being the Consolidated Act relating to County Courts).

The salary of the registrar is graded according to the number of plaints entered in the particular court. If they do not exceed 200, the salary for that year will be £100; over two hundred, the salary is increased by sums of £4 for every 25 additional plaints up to 6,000. Such salaries include all outlay to clerks employed by the registrars. If the plaints exceed 6,000 the salary is fixed by the treasury, but in no case to exceed £700 a year, exclusive of clerks' salaries and office expenses allowed. (51-2 Vict., c. 43, s. 45).

In cases where the Lord Chancellor is of opinion that the whole time of the registrar should be given to public service, on account of the large amount of business, or of the union of the registrar's office with that of the district registrar of the High Court, or the district probate registrar, or any other public office, then he is not to practice, and a salary will be assigned for all his offices not exceeding £1,400 a year: *Ib.* The salary of the judge of a County Court is now £1,500 a year, besides an allowance for travelling expenses.

In certain cases the registrar may act as high bailiff of the court and for this receives an addition of one-fifth of his own salary as registrar by way of remuneration.

The high bailiff is appointed by the judge and is paid by salary, or partly by salary and partly by allowances for the execution of process, and for mileage and possession money.—See "Heywood's County Court Prac., 1894," pp. 12, 19.

43. In the American legal system as it exists in the states, the most remarkable feature is what Woodrow Wilson terms the "local attachment" of the courts. That is all judges and curial officers are elected by the people of the locality, whereby the responsibility is chiefly a responsibility to the electors who form their constituency. There are usually four grades of jurisdiction with corresponding grades of courts in the states system:

(1) Justices of the peace with jurisdiction over petty police offences, and over civil claims for small sums.

(2) County or Municipal Courts holding appeal from justices, and with original jurisdiction one step higher, *i.e.* over civil cases for considerable sums, and over crime not of the gravest character.

(3) Superior Courts; hearing appeals from the County and Municipal Courts and of high original jurisdiction of general character, civil and criminal. These are general courts for the state; the former are inferior sitting for certain counties or districts. The Superior Court sits at several places in succession, and hence is called in many states Circuit Courts.

(4) Supreme Courts, which in most states have only an appellate jurisdiction from the Superior Courts.—See "The State," by Wilson, paragraphs 943-948.

Besides these there is generally found a local Probate Court charged with testamentary matters, administration of estates and appointment of guardians to infants. In Michigan the judge of Probate, elected by the people, may be authorized by the Board of Supervisors for the county to appoint a Probate registrar who is to be paid an annual salary and not by fees.—"Howell Statistics," paragraph 535.

In New York State one Surrogate may be elected in counties of over 40,000 population, but under 45,000 the county judge, also elected, becomes the Surrogate.

Perhaps the following conspectus of the judiciary system in the "Empire State," New York, will give the best general notion of the gradation of courts and jurisdiction:

I. Justice's Court: Held by Justices of the Peace elected, jurisdiction up to $200.

II. County " 1. County Court: Jurisdiction up to $1,000; appeals from Justice's Court.

2. Sessions.

III. Superior " 1. Circuit.

2. Oyer & Terminer.

3. Special Term, hears appeals from County Court.

4. General Term, hears appeals from Special Term.

IV. Court of Appeals: Highest, with only appellate jurisdiction.

There are forty-six justices of the Superior Court elected for fourteen years, with salary of $6,000 and allowance for expenses. The elected county clerk is the local clerk of the Superior Court and of the County Court.

There are seven judges of the Court of Appeal elected for 14 years, with salary of $10,000, and for the chief an addition of $500. This Court appoints its own clerk and reporter.

License Commissioners.

44. These officers were not specifically mentioned in the list of names set forth by the commissioners in the circular letters sent and questions submitted by them, but in many instances reference has been made to this class of officers, and suggestions made for a change in the method of selecting them. At present the whole matter rests with the Provincial Executive, who appoint of their own motion to this honorary position.

This point has not been reached without much remarkable variation of practice in the province; and in other countries much diversity of method is manifested in administering this branch of public affairs.

45. Some objection is made to the present mode in Ontario because of the alleged interference of the commissioners in provincial politics, and if such be the fact, unquestionably some stringent prohibitory remedy should be applied. The words of Daniel Webster in a like connection have lost none of their weight by lapse of time. He said "office holders by their very situation, their public station, their connection with the business of individuals, their activity, their ability to help or to hurt according to their pleasure, their acquaintance with public affairs, and their zeal and devotion exercise a degree of influence out of all proportion to their numbers."—"Works," vol. iv., p. 184.

46. In England, notwithstanding the general transfer of administrative power in 1888 from justices of the peace to county authorities, the licensing function, as being semi-judicial, is left in most cases with the magistrates. In the Government of Victoria (Australia), the granting of liquor licenses is within the jurisdiction of a specially constituted system of "licensing courts."—"Licensing Act of 1890," para. 79-84; Jenks Victoria, p. 335.

47. In the United States of America the provisions of the different state statutes, as to the authorities in whom the power to grant liquor licenses shall be vested, exhibit, as might be expected, a considerable difference of plan and policy. But speaking generally, the duty is confided either to the Board of Commissioners or supervisors of the county, to the County Court, to the Probate judge, to the council or board of aldermen of a city, or to a board of excise specially created for the purpose; s. 154, "Black on Liquors." The Board of Commissioners is usually composed of three persons elected for each county, who exercise corporate power in the management of county affairs. The Board of Supervisors are clothed with like powers, but are differently constituted, being chosen, not by the county at large, but by each township, city and village in the county electing one supervisor. This board corresponds to our county councils.

48. In Upper Canada the English system was partly introduced by giving the justices of the peace in quarter sessions authority to regulate the duties to be paid for licenses (59 Geo. III. c. 2, 1818). And in 1840 one of the last acts of the separate province of Upper Canada was to give the whole power of granting licenses to innkeepers for the sale of liquor to the magistrates so assembled (3 Vict. c. 20).

In 1850 it was declared by the Legislature to be expedient to vest in municipal authorities the power of fixing the number of taverns, etc., and of prescribing the conditions on which licenses to keep the same should be obtained and duty paid thereon, and power was granted to make by-laws in respect thereof.

It was then provided that at the annual election of councillors in each township three inspectors of houses of public entertainment should be elected, and in each ward of a township or city one inspector (13, 14 Vict. c. 65, s. 5; see 16 Vict. c. 184.) Upon the certificate of these inspectors, licenses were to be issued.

Another change was made in 1857, by which inspectors of houses of public entertainment were no longer to be elected by the people, but were to be appointed by the council of each municipality for each year (20 Vict. c. 70).

Then after Confederation, the Act of 1860 provided for the council of every township, town and incorporated village, and the commissioners of police in cities, passing by-laws for the annual appointing of one or more persons to be inspectors of licenses, upon whose favorable report the license was granted (32 Vict. c. 32, ss. 6, 12, and see Act of Canada 29, 30 Vict. c. 51, s. 262). Next the transfer of authority was made in 1876, whereby all power and duties imposed on the commissioner of police and municipal council were to belong to and be exercised by a Board of License Commissioners composed of three persons to be appointed by the Lieutenant-Governor in Council in each city, county, etc. Upon the discretion of this Board depends the granting or refusing all applications for liquor licenses (39 Vict. c. 26). And so stands the law till this day (R. S. Act, 1887, c. 194, s. 3, etc).

49. A prominent political leader has advocated the adoption of a mixed method, by which the license commissioners be elected by the people in the cities, and be appointed by the council in the counties. This is a return to discarded expedients which would not be likely to yield results so uniformly good as if the commissioners were not so directly in contact with varying phases of popular opinion. An appointive body is in every way preferable, and, while a concession may be made to municipal opinion and interests, by giving place on the board to one who shall be a nominee of the warden or mayor, it is not desirable to place the balance of power in the local body. The state is more interested than any one locality in the proper regulation and enforcement of the liquor laws; for drunkenness as productive of disorder and crime is a source of expense to the whole community, and general habits of temperance are of the utmost value to all the inhabitants. These and like considerations point to the conclusion that the whole liquor and license system, whether prohibition prevails or regulated traffic, is a matter over-lapping the local areas of municipal supervision. It is not trenching on the true limits of local self-government if the administration of the system be shared in and controlled by authorities other than local in some such way as is suggested. Mr. Bryce refers to Boston as presenting a "remarkable instance" of control by a board under a state statute of 1885, by which the police department, and the power to license, regulate and restrain the sale of liquors, is entrusted to three persons appointed for five years by the Governor and council—both political parties being represented on the board (i. 599).

50. The selection of persons for this board, whether as to business or political relations, should be such as to afford the best guarantees for the resolute and impartial administration of their trust.

PART III.

Fees.

1. The second main division of the subject submitted relates to fees, or compensation to the various officers. The matter being agitated is not the abolition of fees, but the application of them to defray official and other expenses. All the officers in question may be classed under the general head of the administration of judicial affairs, with the exception of that as to the registration of documents of title. Now, it is obviously right that those who call for the registration of papers should be called upon to pay for that service. This is the only branch of public business under discussion which, as a whole, can fully compensate the officials, yielding, as it does, a more ample return than is required to render the department self-supporting.

2. As to the expenses of the civil courts, the general proposition is now established that it is right to exact some contribution from litigants to meet this charge on the public funds. Eminent judges and jurists have advocated the abolition of all fees—calling them disguised taxes on the administration of justice. Thus the Bentham school has maintained that suitors ought not to be compelled by the payment of fees to contribute to the salaries of the officers of court, and that the whole official expense ought to be paid by the country at large. The discussion for the present century at all events was brought to a close in England in 1837, when the contestants joined issue in the House of Lords. Lord Langdale advocated the sweeping change by which all fees should be abolished; but against him prevailed the contrary opinions of the Lord Chancellor (Cottenham) and the Lord Chief Justice (Denman.) The latter asked, "Is all litigation *bona fide?* Are you not to have the means of punishing vexatious litigation by imposing costs?" And the former asked, "Is it not just to make him who sets the machinery of the law in motion for his own benefit contribute to the cost of it?"—See Hardy's "Life of Lord Langdale," vol. ii., p. 8.

3. So the matter has been practically settled on an equitable basis that the Government should pay the salaries of the judges, and that as to the salaries of subordinate ministers of justice, and other official expenses, they should be defrayed in part by revenue derived from fees, and in part by the general Government.

4. This appears to be a well-founded and just conclusion, because apart from the particular and individual advantages accruing from the regulation of property and the protection of private rights, the whole commonwealth benefits by the supremacy of law which ensures public order and peace.

5. The expenses of criminal justice cannot, of course, be defrayed by these prosecuted by the state, so that these charges in their entirety fall upon the public, and are usually apportioned equitably between the state and the municipality wherein the crime occurs or is prosecuted.

6. Lord Langdale forcibly urged that all persons engaged in the administration of justice should be paid by salaries, and not by fees, but his scheme contemplated doing away with fees altogether.—"Life," by Hardy, ii. 38.

7. It is to be conceded that this payment by salaries is a sound principle when confined to judges and judicial officers, yet, so far as ministerial officers are concerned, other considerations arise, which have induced a general practice favoring the receipt of fees for services rendered. The mistake of allow-

ing officers of justice, whose duties are discretionary, to profit by fees is sure to lead to manifold abuses. A sound ordinance is embodied in the constitution of the state of New York, that no judicial officer, except justices of the peace, shall receive for his own use any fees or perquisites of office: Art. VI. 21 (1846.) And it would be well if even the exception could be omitted.

8. One reason for paying ministerial officers by fees is that of stimulating to diligent exertion; for, as Lord Langdale admitted, "A man's pecuniary interest presses upon him so constantly and steadily throughout his whole life, that in the end it must have a very great and powerful influence." "Life," ii. 230.

9. The question of salary out of fees, as opposed to fees *simpliciter*, was before the bench of Canadian judges in 1845, when our practice was being shaped, and the fees to be taken by district officers, (sheriffs, coroners, clerks of the peace, constables, and criers), was being settled by appropriate tariff. In some districts clerks of the peace had been paid, (without legal authorization,) fixed salaries in lieu of fees. The chief justice (Robinson), and the other judges, (Macauley, Jones, M'Lean and Hagerman) thus stated their united opinion: In considering the probable advantages and disadvantages of such a mode of remuneration, it seems to the judges, on the one hand it would save the justices and the district councils much trouble, as well as the officer himself, and it would relieve the latter from the imputation of multiplying services unnecessarily in order to accumulate fees; but on the other hand it is to be considered that where the business of a public office consists of a multitude of small duties, some of them very troublesome in their nature, the best security for their being duly performed is to give the inducement of a distinct remuneration for every distinct act of service. And as it seems under the present system, some difficulty has arisen in consequence of the clerk of the peace claiming the right to perform certain services, which it is concluded rest now with the clerk of the district council, the judges apprehend that if a fixed salary were to be substituted for all fees, there might then be a struggle in the opposite direction, and there might possibly be found a disposition in some of the clerks of the peace to leave to the clerks of the district councils the performance of some duties which are not clearly within their province. This was printed at the head of the tariff of fees established by the judges under 8 Vict., c. 38 (M. T. 9 Vict. 1845.) First published in 1845, it was again printed in 1865, with the modified tariff of that year.

10. The sound principles underlying the fee system, and its proper limitations, are well touched upon by Jeremy Bentham. Thus he writes in the "Rationals of Judicial Evidence." "It is only in so far as it may be in a man's power to multiply fees, by multiplying occasions for fees, that the principal reason for the abolition of fees has place. In other respects, it is of use that reward should keep pace as close as possible with service. The closer it keeps pace with service, the more it sweetens service; and alacrity, instead of disgust, is the result. Under a salary it is a man's interest to be as idle and negligent as he can venture to be, as he can be without subjecting himself to punishment."—Works, vol. vii. p. 339, note. He again points out that by fees the reward is exactly and directly in the proportion to the service performed, and repeats that when reward, instead of being bestowed in a lump, follows each successive portion of labor, the idea of labor becomes associated with pleasure instead of pain. *Ib.* ii. vol. 239.

11. Compare the opinion of Lord Brougham, in which he would draw the line between salaries and fees in this direction: "These officers may be

made dependent on fees altogether, where the multiplication of the fees shall not depend on their own discretion." Speech in 1831 quoted in Bentham Works, vol. v. p. 590.

12. The practical evolution of the fee system may be traced through the following stages: First, the, (so to speak,) primitive state of fees being attached to the different items of service, and then taken by the official for his own use without any accounting.

Second. It being surmised that overmuch is thus obtained by the officer, (as population or work increases,) he is required to keep accounts, accessible to audit, or to make sworn or otherwise verified returns to the authorities as to how much is charged or collected.

Third. Then based on such accounts or returns, there is ascertained a fixed or variable sum out of the total fees which may be retained by way of salary, while the residue is to be turned over to the public use.

Fourth. Then the final stage is reached by means of comprehensive legislation whereby salaries are graded, (usually on a basis of population,) and the entire of the fees is paid over periodically by the officer, who then becomes a collector for the public authorities, central or municipal.

13. When the office is small and unimportant, not occupying all the time, and not yielding enough fees to maintain the officer, it is the usual practice to allow him to take all the fees. It is only when the receipt of fees amounts up in the larger and more important offices to a total which would be an excessive compensation to the receiver—having regard to the average standard of living and other circumstances, such as the responsibility of the officer—that it becomes desirable to regulate or fund.

14. In England the salary stage is pretty generally reached, but it is not of much assistance to draw from the figures thus found, as the scale of remuneration is much larger than that paid or received for corresponding services in this continent.

15. The manner of grading salaries in the English county courts according to the volume of work, has been already set forth in sufficient detail. But in regard to the high sheriffs of counties and their deputies, England is yet in the first stage, and is only awaking to the need of some better adjustment. According to a report of the select committee of the House of Lords, appointed to report on such fees and profits, it appears that large profits are made by the undersheriffs in Lancashire, Yorkshire, Glamorganshire and the county of London; and smaller sums in other counties, varying from about £400 down to £5 per year. Many of the witnesses were of opinion that the office ought to be a salaried one under the Crown.—38 Sol. J., 621 for July 14, 1894.

16. But the most instructive illustrations are to be drawn from the experience of the States of the American Union. The primitive plan is noted by De Toqueville, writing in 1830, in these words: "In general the American system is not to grant a fixed salary to its functionaries. Every service has its price, and they are remunerated in proportion to what they have done." Even so late as 1890, it is said in a well-known American text book that a great majority of purely ministerial officers are compensated by fees payable by each individual who requires their services.—"Mechem on Public Officers," par. 681. As to clerks of State Courts: the statement is made in the current American and English Encyclopædias of Law, vol. 19, p. 562, that clerks of courts are usually compensated for their services by fees allowed by law for each designated act or service, though in some instances they are paid by fixed salary. In England the rule is to pay all clerks of courts by fixed salaries, as already stated. In the

Federal Courts of the United States, district attorneys and marshals have salaries of $200 a year and the fees received in judicial proceedings as fixed by law, limited however to a maximum compensation of $6,000 a year. In the Supreme Court of the United States the late clerk (Middleton) received an income of about $50,000 from fees, as it was reckoned The chief justice received $10,500 and the other justices $10,000 a year. But a disagreement arose among the clerical officers which occasioned an investigation, with the result that the pay of the clerk was cut down to $6,000 a year. This is paid out of the fees, the remainder being turned into the treasury.—Alb. L. J., vol. 49, p. 179. The clerks of the United States courts are appointed by the judges, and are paid by fees, limited to $3,500 a year, except in the Pacific States where the limit is $7,000.—A. R. Spafford in ii. Lalor Cyclop. 664.

17. Though there is no uniform characteristic system of official returns of fees collected, (as in Ontario,) whereby the amounts received by the different officers can be ascertained from year to year,—yet there has been in the States generally a growing suspicion that fee-paid officials have been in the receipt of great if not exorbitant gain. This is manifested in the older states by placing legislative limits on the receipts taken by the officer, and in the newer states by elaborate provision at the outset for payment of salaries out of the fees. Thus Michigan is in a transition state; the sheriffs of counties are paid by fees of which no account is required, and so in many counties are registers of deeds. County clerks are paid partly by salary and partly by fees of which no account is called for. County attorneys on paid salaries fixed by the board of supervisors; so also are probate registrars. Whereas in Indiana the legislature of 1891 requires all officers to make sworn reports of all fees collected, and to pay over what is collected to the county treasurer; then certain county officers, such as clerks of Circuit Courts, recorders and sheriffs, are to receive the compensation specified for the counties *seriatim*, which is graded in proportion to the population and the necessary services required in each county, and no other compensation whatever. As contrasted with these county officers, prosecuting attorneys in Indiana, though elected by the people are paid salaries out of state funds. The salary fixed is $500, "and also the fees now allowed by law."—Gen. Laws of 1891, p. 426-17. Again in New Hampshire clerks of court and registers are paid by fees as to which it appears that no returns are called for. Sheriffs are paid in part by fees and in part by fixed salaries differing in amount for each county. Solicitors of counties are paid salaries fixed by statute, as are registrars of probate; the former, however, out of the county treasury; the latter out of the state treasury.—See Public Laws of 1891, cap. 286.

18. Then take, as an example of the most advanced stage of development, the state of California, where the officers of a county are a sheriff, a county clerk, an auditor, a recorder, a tax collector, a district attorney, an assessor, and a treasurer. Then comes a classification of all the counties of the state, based on population in 48 divisions, and salaries fixed on that footing. Thus the 8th class county contains a population of 20,000 and under 21,000, and salaries are as follows: county clerk $3,000; sheriff $7,000; recorder $3,200; treasurer $2,500; district attorney $2,000; assessor $6,500; tax collector $750. And the 45th class county has a population of 3,000 and under 4,000, and salaries are: county clerk $1,500; sheriff $3,000; recorder $800; treasurer $1,000; assessor $1,500; collector $500, and district attorney $1,200.—Deering's Code, ss. 162-210.

19. In Pennsylvania, by the constitution of 1874, it was ordained that in counties having over 150,000 inhabitants all county officers should be paid by salary.

By legislation in 1876 the salary principle was extended to counties between 100,000 and 150,000 population. From that time in all counties having a population under 100,000 the county officers are paid by the receipt of fees as itemized by statute. As a sample of the salaries in counties over 150,000 and under 250,000 inhabitants, the district attorney draws $4,000, the sheriff $6,500, the recorder of deeds $3,500, the clerk of court $3,500, the registrar of wills and *ex-officio* clerk of Orphans' Court $3,500. In counties of 100,000 the rates are lower, and as follows: District attorney, $3,000; sheriff, $4,000; recorder of deeds, $3,000; clerk of Orphans' Court, $2,000; registrar of wills, $2,500; clerk of quarter sessions and oyer and terminer, $2,000; prothonotary (of Ct.), $3,000.

If the register of wills and clerk of Orphans' Court are held by same person $3,000.

If clerk of quarter sessions and of Orphans' Court are held by the same, person, $2,500.

20. The process of transition from fees to salary is well exhibited in the legislation of Arkansas: In the laws of 1889 the following officers are allowed to receive fees; clerk of the Supreme Court, and clerks of the Circuit Courts and of County and Probate Courts, and also recorder of deeds, and sheriffs. These officers are all required to enter all fees, and make sworn returns thereof to the judge of the Circuit Court of the county.

But in 1893 we find provision is made for the payment of salaries to some of the officers in the larger and more populous counties. Thus in Sabastian county, (the population in 1890 being 33,200), the clerks of the Circuit and County Courts are to be paid a salary of $3,500 a year, out of which is to be paid all deputies and assistants. So in that county the sheriff is to get $3,500 per year and to pay his deputy and assistants thereout. Again in 1891 in Washington county, (population 32,024,) the County Court clerk and the Circuit Court clerk is to receive $1,500 as yearly salary, and the sheriff $1,500. As to the sheriff, this is supplemented in 1893 by a direction that the Circuit Court is to be at liberty to allow him $500 to pay for the services of a deputy.

And as to Benton county (population 27,716), in 1893 it is enacted that when the fees and emoluments of the county clerk in any one year shall reach $1,500, and when the fees of the clerk of the Circuit Court shall reach the sum of $1,800, all fees and emoluments that by law accrue to the clerk in that year in excess of the sum mentioned shall be paid by the officers into the treasury of the county. Similar provision is made in the case of the sheriff as to all fees in excess of $1,500, but the Act is not to affect the existing county officers.—Act lxxxvi.

21. Prof. Goodnow supplies a convenient summary of the state of the law and practice generally as to fees in the American Republic in these words: "The amount of the salary attached to the office may be fixed, or may depend on the amount of business done in the office, *i.e.*, it may consist wholly or partly of fees. The latter method is very common in the consular and customs services of the national Government, and in the local offices in the commonwealths. The advantage of the fee system consists in the fact that the salary or compensation is paid under it by those persons who make use of the office to which the fees are attached. Its disadvantage is to be found in the fact that on account of the smallness of the fee usually required, extortion is not infrequently practised by the officers, and submitted to by the public, notwithstanding the most stringent

penal provisions that may be passed to prevent it. The compensation actually received is out of all proportion to the work done, and comes to be regarded rather as a reward for political service, than as a compensation for work done. On this account the tendency at present is to replace fees by fixed salaries. Another method of fixing the compensation is to pay so much for each day's service rendered by the officer. This system of *per diem* allowances, as it is called, is quite common in the localities where the public business is so arranged as to require a great number of officers who shall devote only a part of their time to the public service. Still another method of fixing the amount of salary is to be found in the national postal service, where the compensation of postmasters is, within certain limits, determined by the receipts of their offices, *i.e.*, by the number of postage stamps sold.—Pp. 70, 71, vol. ii.

22. The abuse of the fee system above spoken of, on account of extortion practised by the officers, is not experienced in this country. Several reasons exist for this salutary condition of the public service. The fees charged are in all the courts subject to taxation, and are besides watched by the solicitors employed by the parties. There is a system of competent inspection by Government officers by which any attempt at over-charge is checked. There is besides that feeling of permanence in official positions, consequent upon upright dealing, which forms the best inducement to official rectitude. The short tenure of office in the states of the Union supplies a temptation to many men to make the most of their opportunity, and to take advantage of their position to levy unjust gain.

23. The examination of the various methods employed in the different states of the Union does not disclose any settled rule or principle in the adjustment of fees and salaries; considerations of expediency appear to govern, having regard to local circumstances and local experience.

24. In the management of fees in this province it is submitted that in the case of ministerial officers the better practice is to let them be collected by the officer for his own use, unless and until the aggregate amounts to an unreasonably large compensation, having regard to his duties and responsibilities. When the proper limit is reached his salary should be fixed, to be taken out of the fees, and the balance collected, with or without percentages, as may seem expedient for the public use.

Indeed some such method has been developed in Ontario as an outcome of the growth of the country, and has been framed for the protection of both the officer and the public.

25. But it may be proper at this point to give in brief the steps by which the fee system has progressed, as displayed in the statute book of the province.

The scale of fees to be received by the official principal and surrogate and register of the Court of Probate was fixed by the first statute of 1793 (33 Geo. III., c. 8, s. 18). In 1858 the Court of Probate was abolished, and in each county a Surrogate Court was established having one judge and a registrar. Judge and registrar were to take fees for their own use, according to a scale fixed by the Superior Court judge. Clerks of the County Court were to be *ex officio* registrars (22 Viet., c. 93, s. 49-60). And upon that footing the law remains to the present day.

In 1822 the judges were directed to establish scales of fees to be taken by all officers of court (2 Geo. IV., c 1), and the like provisions as to District (now County) Courts by cap. 2 of the same year. These are at the root of all subsequent tariffs of costs.

In the original Division Courts by Act of 1833 there was the tariff of fees to be received by the commissioner (who presided), the clerks and the bailiffs, 3 Wm. IV., c. 1, s. 30. This was amended in 1837 (7 Wm. IV., c. 12).

In 1841 it was provided that every judge and clerk of the Division Court should be paid by salary; that of the judge to be not over £200 nor less than £100, that of the clerk to be not over £100 nor less than £20 (4, 5 Vict., c. 3, s. 9). The bailiff was to be paid by fees as allowed by the Act. The Governor-in-Council was to fix the remuneration to be paid to the judge and the clerk, having due regard to the population of the several districts and divisions—and this might be increased or diminished.

The clerk was to account and pay over at least once in every three months to the treasurer of the district, (who was to be receiver-general of the fees of the several Division Courts in his district); and thus was formed a fee fund to be applied to salaries (s. 12). Any deficiency of salaries was to be made up out of the consolidated funds of the province (s. 14).

This provision for the payment of salaries to the clerks of Division Courts was repealed in 1845, and payment to them by fees only in lieu of other emoluments was restored (8 Vict., c. 37, ss. 1 and 16). Certain fees were to go to the fee fund and others to the clerks and bailiffs (p. 207 of Stat.) These provisions were continued in 1850, when the salary of the judge was increased, and he was to appoint the clerk and bailiff, who were to be paid by fees (13, 14 Vict., c. 53, s. 12).

In 1841 the like provisions were made regarding District Courts as are above mentioned touching Division Courts. Judge and clerk to be paid by salary fixed by the Governor, and all fees to be funded. And when they became County Courts no change was made as to salary.

Then the County Court clerks were declared to be *ex-officio* deputy clerks of the Crown and Pleas in the Superior Courts of Upper Canada (12 Vict., c. 63, s. 11). And it was further provided that the deputy clerk of the Crown should be paid a certain salary, in no case more than £100 or less than £20, to be fixed by the Governor-in-Council. They are to take no fees to their own use, but to pay over all to the inspector-general, and these fees shall form part of the Consolidated Revenue Fund (12 Vict., c. 63, ss. 11-16). This amount for salary was changed in 1873 so as to range between £100 and £600 (36 Vict., c. 8, s. 63).

In 1845 tables of fees to be taken by the sheriff, coroner, clerk of peace, constables and crier for services connected with the administration of justice and for other district purposes, were framed by the justices at the quarter sessions and submitted to the judges under 8 Vict., c. 38, s. 1, and it was then declared that all fees on services for the private benefit of or in the nature of a civil remedy for individuals, at whose instance the same are performed, shall be paid by such individuals, (and these to be so distinguished in the table), and all other fees shall be paid out of the district funds by the treasurer of the district.

This is the foundation and origin of the present state of payments made by the counties—as the ratable contribution chargeable to them in return for the profits accruing from the local administration of justice in the several counties. The amounts have been varied and items for other like services added from time —as to which details are not now called for.

In 1846 it was enacted that the expenses of the administration of justice under various heads to clerk of the peace, sheriff, coroner, constable and crier, theretofore paid by local taxation, should be paid out of the public funds of the province (9 Vict., c. 58). This relieved the district funds from the payment of expenditure more properly chargeable on the public, thereby recognizing the

principle that the administration of justice is not merely a local or municipal matter, but of general importance to the central government, representing the whole community.

Before this, and in part to recoup counties, it had been provided that fines which go to the poor by the criminal law of England, and other fines not provided for, should be paid to the treasurer of the district in which the conviction took place (1830) 2 Geo. IV., c. 1.

25a. In Quebec the fees are funded in the administration of justice, and salaries paid thereout, in all places at the discretion of the Lieutenant-Governor in Council, except in the districts of Quebec and Montreal, which are fixed thus by statute:

—	Sheriff.	Prothonotary.	Clerk of Circuit Court.	Clerk of Crown.	Clerk of Peace.
	Not over $	Not over $	Not over $	Not over $	Not over $
District of Quebec	3,600	3,000	1,600	1,200	2,000
" Montreal	3,600	4,000	2,600	1,200	2,000

To clerk of Superior Court, Montreal, $2,600.

See Rev. Stat., Quebec, 1888, paragraph 2,696, vol i.; see also the evidence of Dr. McLaren, where a statement of the Lower Canadian method is given with sufficient fulness.

26. The keynote of the present system of regulating the application of fees in Ontario is found in the statute of 1872, drawn by the Hon. Edward Blake, with reference to the revenue from registration of deeds, the need and intent of which is expressed in the preamble: "Whereas the number of registrations, extracts and searches has become so large in divers registry offices that the income therefrom is now excessive, and whereas the like result may be expected in other registry offices, and whereas it is expedient to make some provision in the premises." Then it was enacted that each registrar might retain fees up to $2,500 for the year, and as to fees between $2,500 and $3,000 he should retain ninety per cent. to his own use; between $3,000 and $3,500, eighty per cent. to his own use; between $3,500 and $4,000, seventy per cent. to his own use; between $4,000 and $4,500, sixty per cent. to his own use, and where fees exceeded $4,500 he was to retain fifty per cent. and no more. All the surplus over what he retained was to be paid over for the uses of the municipality (35 Vict., c. 27).

This plan was soon applied to other offices, and was ultimately extended to all fee-producing offices. Thus in 1870 clerks of the County Court, registrars of the Surrogate Court, and clerks of the Division Court in a city or part of a city were ordered to keep books of all their fees, charges and emoluments and make a return under oath (41 Vict. c 2, s. 44). And as to the clerk of the county of York, he was to retain fees up to $2,000 and pay over certain percentages of the amount received thereafter as provided in the Act. In the following year the plan of checking the fees was applied to the office of sheriffs and returns under oath were called for (42 Vict. c. 25).

In 1880 every county attorney and clerk of the peace was directed to keep and make the like returns (43 Vict. c. 3). And in the same year every clerk of the Division Courts, and also the bailiffs were to make entries of all fees, etc., and make returns under oath to the new officer then appointed, called inspector

of Division Courts (43 Vict. c. 8). Each Division Court clerk was allowed to retain for his own use $1,000, and in excess of that he was to pay over certain percentages to the treasurer of the province, as by sect. 39 of the Act.

In 1881 the Judicature Act required that all officers paid by fees should yearly transmit to the treasurer of the province a just, true and faithful account verified by oath of the amount of fees payable to him by virtue of his office during the year (44 Vict. c. 5, s. 64, ss. 14). And in 1884 these returns were to be made to the new officer called inspector of county offices connected with the administration of justice (47 Vict. c. 10, s. 16).

To this functionary are now made all returns from sheriffs, local masters, local registrars and deputy registrars, county crown attorneys and clerks of the peace.

In 1892 there was a comprehensve enactment regulating the fees of certain public officers, viz.: Division Court clerks, local registrars of the High Court, deputy clerks of the crown, County Court clerk and surrogate registrar, registrar of deeds and sheriffs. All these were to pay over certain percentages to the province, out of which a fund was to be formed to cover the expenses of inspector, auditor and other charges (53 Vict. c. 17). This was, however, superseded by the Act now in force in 1894, of which the details may be given (57 Vict. c. 9).

Every Division Court clerk is to retain for his own use up to $1,000; of further net income he is to pay over to the province.

On excess over $1,000 and not exceeding $1,500, 10 per cent.
" $1,500 " $2,000, 20 per cent.
" $2,000 " $2,500, 30 per cent.
" $2,500 he is to pay over 50 per cent.

Every local registrar, clerk of the crown, deputy clerk of the crown, County Court clerk and Surrogate registrar shall retain to his own use up to $1,500 from all his offices, then to pay over to the provincial treasurer:

On excess over $1,500, not exceeding $2,000, 10 per cent.
" $2,000, " $2,500, 20 per cent.
" $2,500, " $3,000, 30 per cent.
" $2,500 he is to pay over 50 per cent.

Every registrar of deeds is to retain to his own use $1,500, and then out of further net income he is to pay over the same ratio of percentage as in the case of local registrars, etc.

Every sheriff, county crown attorney (whether clerk of the peace or otherwise), and clerk of the peace, is entitled to retain to his own use $2,000, and then of further net income he is to pay to the province:

On excess over $2,000 and up to $2,500, 10 per cent.
" $2,500 " $3,000, 20 per cent.
" $3,000 " $3,500, 30 per cent.
" $3,500 he is to pay over 50 per cent.

Salary to Local Masters and Deputy Registrars.

27. These were officers of the old Court of Chancery, generally held by the same person and appointed by the judges, to transact the business of the court in the different counties of the province. The statute which gave power to appoint also directed these officers to retain certain fees to their own

use—a practice which has continued to the present day—(Con. Stat U. C. c. 12, s. 13 and 15). Under the Judicature Act of 1881, the office or offices became appointive, and it is so arranged that the county judge may be the local master, and the County Court clerk the deputy registrar, if one person is not appointed to serve in both capacities. So far as the mastership is concerned, that is essentially a judicial office of an important character, requiring the possession and exercise of skill, judgment and discretion. There is power to commute with local masters, so as to pay them a salary in lieu of fees, and this power has been in several instances exercised. The basis is that the sum shall not exceed the average income derived from fees for the five preceding years (Judic. Act 1881, s. 64, ss. 6). It cannot be too strongly recommended that these judicial officers should all be placed on the footing of salaries, whether the office is attached to that of the county judge or not. At present local masters whose gross income is less than $2,000 are allowed to practice; this is a most undesirable thing, and if in such cases a respectable salary cannot be paid, so as to support the officer without the necessity of his engaging in practice, then the office should be united to the county judgeship, or combined with some other local office.

28. It is observed that in some cases of commutation, the aggregate of fees received during the year has been in subsequent years less than the amount of commutation money. Many reasons may account for this, it may be in some cases that the officer is not so diligent in the collection of fees for the treasury as if he were himself the beneficial recipient, or it may be that in some cases work unnecessarily protracted under the one system has been done more expeditiously under the other, and in still another case it may be that through the amendment of the laws, and the simplification of procedure, the volume and details of work actually done and to be done have decreased. The remedy to preserve to some extent a just equilibrium between the moneys received by the treasury and those expended for the salary would be to have readjustments of the amount of salary every three or five years, based upon the returns of what had been collected during these years by the officer. Something analogous to this is found in the legislation of Canada with reference to the salaries of officers of the court in the Lower Canadian judicature. The provision first made was that the officer should be paid solely out of the fees attached to his office, and if they fell short then he could receive no more than the net balance after paying deputy and clerks thereout (Act of 1850; 13, 14 Vict, c. 37, s. 4). But this was amended so as to give the deficiency out of the public funds, but retaining some compensatory means of adjustment in case there should be a chronic shortage in the collection, in this that the fixed salaries assigned might be modified by the Governor from time to time, as he should judge expedient, 18 Vict. C. 98 s. 5.

Salary to Clerk of the Peace and County Attorney.

29. It would be a great convenience to substitute for the fees granted to the clerk of the peace a fixed salary based upon the commutation of receipts from his office as is permitted by the Ontario Statute, (42 Vict. c. 18, 1879). In 1841 it was recommended by the Justices of the Peace for the district of London that £300 a year should be allowed the clerk in lieu of all fees payable by the County, (*Atkin* v. *London*; 1 U. C. R. 293). And in some counties *e. g.* Kent, where the fixed sum is $1,000 the statute has been invoked. But it would be well to have this done systematically in all the counties at the option of either

officer or municipality. It would be also most desirable to have the remuneration paid to this officer as county attorney, not dependent on fees, but placed upon a fixed basis, as in the case of other vquasi-judicial officers.

By the English municipal Act (5, 6 Wm. IV. c. 76) the clerk of the peace for the borough was paid by fees settled by the sessions, until (14, 15 Vict. c. 56 s. 9) when the justices of the peace and the council of the borough might recommend that he should be paid by salary in lieu of fees, (stating the amount of salary) and thereupon the Secretary of State might order such salary to be paid out of the county rate. Here there was a provision made for the concurrence of three authorities in changing from fees to salary, viz., the magistrates, the local authorities and the Government. That suggests a composite board in Ontario for the settlement of what shall be paid as a fixed salary to the clerk of the peace, with the right of appeal (it may be) to one of the justices of the Supreme Court of Judicature in Ontario.

30. It may be noted in passing that the existing scale of fees receivable by the clerk of the peace is in some particulars unsuitable to the present method of doing business, but all such details could be dealt with by the suggested board.

31. It may be further noted that there is great diversity in the aggregate amounts received by county attorneys and clerks of the peace, which can hardly be entirely referable to the volume of work done. Before salaries are fixed for this joint office there should be some method of uniform appraisement of the total value of the services rendered, by the application of one standard throughout the Province. This might be readily accomplished by one competent officer satisfying himself as to whether the variations in amount in different counties of about the same population arise from local variations of audit, or from a greater or lesser amount of service.

32. The county attorneys should be required to intervene in all important criminal matters that are brought before the courts for adjudication—particularly in the police courts, (See the evidence of Mr. Crerar) and in fixing their compensation the policy should be to give such amounts as will secure more than average ability in this office. The complaint in many of the States of the Union is that inferior men alone seek this position, as it is not worth the while of others to do so on account of the inadequate returns attached to the office.

33. Under the English Local Act of 1888 the County Council shall pay the clerk of the peace as such, (and as clerk of the County Council)—such salary as may be fixed by the standing joint committee (*i.e.* of the Council and the magistrates) and all fees and costs payable to the clerk of the peace shall be paid into the county fund.

Before this enactment Mr. Maitland summarizes the practice thus:—"Under modern statutes the clerks of the peace are to be paid by salaries and the fees which used to be their reward go to the county treasurer." "Justice and Police" 92.

34. There is a strong consensus of independent opinion that these functionaries should be paid by salary. Mr. Hawkins, the law clerk of the English treasury, said before the Parliamentary Committee in 1849, in adverting to the multiplication of fees: "I am trying at the request of the Secretary of State to give such a table of fees for magistrates' clerks out of sessions and for clerks of the Peace of the Quarter Sessions as will obviate that difficulty, *i.e.*, that he shall have so much upon the commitment and so much upon the trial, without

reference to all these minute fees which he can increase at pleasure; it induces him to have a great many more witnesses than are absolutely necessary, and to lengthen the indictment beyond what is necessary; all of which Magistrates cannot help, I admit, but the clerk of the peace knows that he will get fees by all this and so he does it. (Q. 355). He then explained that the clerk before the Magistrate is often the prosecuting attorney as well. Then he proceeds, "There should be in every county a Crown prosecutor; a man whose independent business should be to look after these things and who should be upon a fixed salary. (Q. 309). He points out that the average cost of the Scotch prosecutions (where there were procurators fiscal in the different counties conducting them under the Lord Advocate's control and supervision) was £4 or £5; whereas in England under the system of wide-spread responsibility in the different counties, the average cost was from £15 to £20. (Q Q. 293, 4).

35. Again, let the matter be viewed from the standpoint of the criminal, and the scale turns in favor of a salary. The experience of the philanthropic Frederick Hill may be usefully quoted on this head:

"I recollect a conversation with Lord Cockburn on the subject of the payment of procurators fiscal by fees. I mentioned to him that talking with prisoners, I not infrequently found that they entertained a belief that the cause of their being in gaol was the desire of the 'fiscal' to put a fee of two guineas into his pocket. This evil I thought might be readily obviated by paying the prosecutors a fixed salary instead of fees on conviction. Although Lord Cockburn as a judge had necessarily much to do with criminals, he said that the idea I had thrown out was quite new to him, and that he would carefully consider it. Some time afterwards the practice of paying procurators fiscal by fees was discontinued, and payment by salary was substituted." From the autobiography of Frederick Hill (under date 1836) p. 140-1.

Division Court Fees.

36. The late Statute of Ontario (57 Vict., c. 23, s. 11, 1894), makes a special provision for cases where the amount claimed is not over $10, so that a lump sum for fees shall be received by clerk and bailiff. It is worth considering whether this plan might not be extended advantageously to most, if not all cases within the Division Court jurisdiction. In England, the same matter was under consideration in 1849, and was brought forward by the law clerk of the treasury before the select committee of the English Parliament. Speaking of the English County Court Act of 1847, he said: "Instead of the table of fees there should be a percentage fee established according to the amount of the debt; half of that percentage to be paid when the summons was taken out, and the other half before the hearing. Besides the percentage it would be necessary to keep a few of the fees, *e.g.*, for search—to keep people from searching the books out of curiosity." Q.Q. 32, 35; 231-235. It appears that in the County Courts of Scotland when the sum claimed is £12 and no litigation, the undefended expense is 10 shillings; when it is £25 the expense is 15 shillings, and if £50, then 15 shillings, and not more than 20 shillings where £100 is claimed; "Brougham's Speeches, vol. ii, p. 509, (Ed. 1838).

37. In the "Poor Man's Court" it would be well to have the simplest method of fee-payment, so that the ignorant and uneducated might not have to deal with a number of small items, but with one lump sum which would cover everything to be paid in the way of court charges.

PART IV.

As to Amount of Compensation.

38. 1. A table has been prepared based upon the returns for 1893, showing the amounts received in the different counties of Ontario so arranged as to show the gross earnings of the different officers—the proportion paid by the Provincial Government; the proportion paid by the county; and the proportion paid by the parties directly served; also the net income received by the officer after the payment of expenses; and the area and population of the counties.

39. 2. Also another table based upon the former showing the counties classified according to population and the salary received in each by sheriff, county attorney, and clerk of the peace, local registrar, deputy clerk of the crown and registrar of deeds:

TABLE,

County.	Area in acres.	Population	Officer.
Algoma	27,604,180	26,627	Sheriff County Attorney and Clerk of the Peace Local Registrar
Brant	223,215	36,445	Sheriff County Attorney and Clerk of the Peace Local Registrar
Bruce	760,836	64,603	Sheriff County Attorney and Clerk of the Peace Deputy Clerk of the Crown
Carleton	565,815	77,630	Sheriff County Attorney and Clerk of the Peace Deputy Clerk of the Crown
Dufferin	315,624	22,311	Sheriff County Attorney and Clerk of the Peace Local Registrar
Elgin	441,896	43,377	Sheriff County Attorney and Clerk of the Peace Local Registrar
Essex	422,946	55,340	Sheriff County Attorney and Clerk of the Peace Deputy Clerk of the Crown
Frontenac	662,312	47,009	Sheriff County Attorney and Clerk of the Peace Local Registrar
Grey	1,097,350	71,214	Sheriff County Attorney and Clerk of the Peace Local Registrar

No. 1.

Gross earnings in 1893.	Amount paid by Government.	Amount paid by county.	Amount paid by parties served.	Net income after payment of expenses.	County.
$ c.	$ c.	$ c.	$ c.	$ c.	
2,657 22	1,792 85	.....	864 37	1,062 30	Algoma.
1,569 77	1,549 27	.....	20 50	1,412 21	
1,213 33	750 00	.....	463 33	1,198 33	
2,344 23	1,095 22	476 16	772 85	1,718 71	Brant.
1,596 66	714 20	823 56	58 90	1,533 16	
2,834 41	675 00	.....	2,159 41	1,877 27	
3,400 10	988 30	615 72	1,796 08	1,504 46	Bruce.
2,144 56	790 93	1,321 76	31 87	2,641 19	
2,854 45	450 00	.....	2,404 45	1,935 45	
4,717 26	1,221 90	539 26	2,956 10	2,580 54	Carleton.
1,373 93	460 49	849 19	64 25	1,525 32	
4,088 00	450 00	.....	3,638 00	3,272 10	
2,042 48	595 27	374 81	1,072 40	1,291 11	Dufferin.
586 48	268 78	317 70	.....	552 48	
1,707 25	675 00	.....	1,032 25	1,675 15	
3,124 47	1,284 85	772 54	1,067 08	1,165 51	Elgin.
1,758 05	1,084 24	673 81	....	2,033 47	
2,920 62	675 00	.. ..	2,245 62	2,287 17	
3,359 20	1,540 55	471 60	1,347 05	1,421 14	Essex.
1,625 08	906 02	572 08	146 98	910 91	
2,200 86	450 00	.....	1,750 86	1,855 21	
2,038 57	803 66	467 15	767 76	1,513 24	Frontenac.
1,438 99	538 20	871 79	29 00	875 35	
2,482 15	675 00	... .	1,807 15	1,658 79	
3,111 66	855 03	687 73	1,568 90	1,827 72	Grey.
596 26	147 45	448 81	.....	596 26	
3,134 81	750 00	.....	2,384 81	2,933 40	

TABLE No. 1.

County.	Area in acres.	Population.	Officer.
Haldimand	279,596	23,440	Sheriff County Attorney and Clerk of the Peace Local Registrar
Halton	223,930	21,982	Sheriff County Attorney and Clerk of the Peace Local Registrar
Hastings	885,411	59,084	Sheriff County Attorney and Clerk of the Peace Deputy Clerk of the Crown
Huron	795,829	66,781	Sheriff County Attorney and Clerk of the Peace Deputy Clerk of the Crown
Kent	582,063	58,019	Sheriff County Attorney and Clerk of the Peace Deputy Clerk of the Crown
Lambton	965,902	58,810	Sheriff County Attorney and Clerk of the Peace Local Registrar
Lanark	600,764	37,725	Sheriff County Attorney and Clerk of the Peace Local Registrar
Leeds and Grenville	741,451	60,888	Sheriff County Attorney and Clerk of the Peace Local Registrar
Lennox and Addington	688,496	24,750	Sheriff County Attorney and Clerk of the Peace Local Registrar

—*Continued.*

Gross earnings in 1893.	Amount paid by Government.	Amount paid by county.	Amount paid by parties served.	Net income after payment of expenses.	County.
$ c.	$ c.	$ c.	$ c.	$ c.	
1,478 96	779 80	329 38	369 78	957 86	Haldimand.
1,750 68	607 79	1,103 63	39 26	1,483 20	
1,673 40	600 00	.....	1,073 40	1,573 40	
1,575 30	691 18	339 75	544 37	1,058 81	Halton.
1,793 15	614 85	1,167 99	15 30	1,637 99	
1,829 10	600 00	.....	1,229 10	1,320 10	
4,316 49	1,075 40	645 40	2,595 69	1,538 96	Hastings.
1,823 08	374 73	1,370 09	78 26	1,725 12	
3,456 97	450 00	.....	3,006 97	2,773 65	
2,754 90	876 95	468 66	1,409 29	1,181 76	Huron.
1,811 95	658 95	1,128 00	25 00	1,067 10	
3,100 85	500 00	.....	2,600 85	2,293 99	
3,682 28	1,225 43	649 20	1,807 65	2,906 97	Kent.
2,841 58	1,693 58	1,000 00	148 00	2,821 24	
2,695 42	450 00	.....	2,245 42	2,136 38	
2,508 93	955 40	439 10	1,114 43	1,370 65	Lambton.
1,978 33	958 33	1,020 00	.....	1,776 25	
2,779 72	675 00	.....	2,104 72	2,573 78	
1,334 97	522 59	410 24	402 14	901 30	Lanark.
1,017 43	407 61	483 35	126 47	948 37	
1,666 53	675 00	.....	991 53	1,509 93	
3,193 09	1,184 65	677 95	1,330 49	2,096 31	Leeds and Grenville.
992 38	521 33	462 80	8 25	906 91	
3,014 44	500 00	.....	2,514 44	2,658 83	
1,531 64	713 47	365 09	453 08	364 06	Lennox and Addington.
643 99	169 43	470 71	3 85	510 59	
1,728 45	600 00	.....	1,128 45	1,629 04	

TABLE No. 1.

County.	Area in acres.	Population.	Officer.
Lincoln	191,459	30,079	Sheriff
			County Attorney and Clerk of the Peace
			Deputy Clerk of the Crown
Middlesex	753,692	92,344	Sheriff
			County Attorney and Clerk of the Peace
			Deputy Clerk of the Crown
Muskoka	3,226,320	17,651	Sheriff
			Deputy Attorney and Clerk of the Peace
			Local Registrar
Norfolk	389,418	30,992	Sheriff
			County Attorney and Clerk of the Peace
			Local Registrar
Northumberland and Durham	808,698	70,462	Sheriff
			County Attorney and Clerk of the Peace
			Local Registrar
Ontario	488,030	45,355	Sheriff
			County Attorney and Clerk of the Peace
			Local Registrar
Oxford	470,376	49,849	Sheriff
			County Attorney and Clerk of the Peace
			Local Registrar
Parry Sound	2,288,800	19,167	Sheriff
			County Attorney and Clerk of the Peace
			Local Registrar
Peel	289,294	24,871	Sheriff
			County Attorney and Clerk of the Peace
			Local Registrar

—*Continued.*

Gross earnings in 1893.	Amount paid by Government.	Amount paid by county.	Amount paid by parties served.	Net income after payment of expenses.	County.
$ c.	$ c.	$ c.	$ c.	$ c.	
2,518 09	1,159 29	561 58	797 22	1,728 00	Lincoln.
1,613 54	615 19	998 35	.....	1,615 98	
1,889 83	450 00	.....	1,439 83	1,817 25	
3,971 58	1,328 90	1,260 48	1,382 20	1,823 65	Middlesex.
3,170 28	1,855 68	1,193 35	121 25	1,129 61	
5,126 15	500 00	.....	4,626 15	3,405 80	
2,153 95	1,899 41	.....	254 54	1,335 40	Muskoka.
1,289 42	1,204 37	.....	85 05	1,240 47	
747 37	600 00	.....	147 37	735 92	
1,753 65	620 71	609 01	523 93	1,053 95	Norfolk.
1,360 03	446 25	887 90	25 88	1,312 36	
1,992 80	675 00	.....	1,317 80	2,144 38	
3,380 21	798 60	660 74	1,920 87	1,447 42	Northumberland & Durham
1,553 48	1,358 98	177 75	16 75	1,405 26	
3,473 80	750 00	.....	2,723 80	2,480 76	
2,333 56	888 20	562 05	883 31	1,209 80	Ontario.
1,936 53	847 85	983 68	105 00	1,395 82	
2,393 95	675 00	.....	1,718 95	2,267 82	
2,731 61	833 69	518 16	1,379 76	1,788 37	Oxford.
1,079 64	389 35	673 19	17 10	1,258 49	
3,503 38	450 00	.....	3,053 38	2,740 88	
2,294 87	1,303 79	.....	991 08	1,155 11	Parry Sound.
.....	.....	.....	.....	.....	
945 41	600 00	.....	345 41	945 41	
1,932 68	788 82	376 43	767 43	744 17	Peel.
1,218 64	476 95	726 48	15 21	1,184 99	
2,067 74	600 00	.....	1,467 74	1,885 11	

TABLE No. 1.

County.	Area in acres.	Population.	Officer.
Perth	518,007	51,716	Sheriff
			County Attorney and Clerk of the Peace
			Local Registrar
Peterborough	1,947,520	34,597	Sheriff
			County Attorney and Clerk of the Peace
			Local Registrar
Prescott and Russell	521,347	42,462	Sheriff
			Crown Attorney and Clerk of the Peace
			Local Registrar
Prince Edward	229,772	18,889	Sheriff
			Crown Attorney and Clerk of the Peace
			Local Registrar
Rainy River		7,579	Sheriff
			Local Registrar
Renfrew	985,504	49,976	Sheriff
			Crown Attorney and Clerk of the Peace
			Local Registrar
Simcoe	970,310	82,727	Sheriff
			Crown Attorney and Clerk of the Peace
			Deputy Clerk of the Crown
Stormont, Dundas and Glengarry	776,863	69,725	Sheriff
			County Attorney and Clerk of the Peace
			Local Registrar
Thunder Bay		7,650	Sheriff
			District Attorney and Clerk of the Peace
			Local Registrar

—*Continued.*

Gross earnings in 1893.	Amount paid by Government.	Amount paid by county.	Amount paid by parties served.	Net income after payment of expenses.	County.
$ c.	$ c.	$ c.	$ c.	$ c.	
2,356 54	808 20	434 22	1,114 12	1,218 47	Perth.
1,362 08	417 60	929 03	15 45	886 65	
2,850 10	675 00	.....	2,175 10	1,987 55	
1,928 92	244 31	118 22	1,566 39	1,189 15	Peterborough.
1,188 33	449 47	681 31	57 55	1,242 38	
2,122 39	675 00	.....	1,747 39	2,200 15	
2,006 31	966 93	385 78	653 60	1,106 56	Prescott and Russell.
1,156 94	332 29	791 15	30 50	1,137 03	
1,507 13	675 00	.....	832 13	1,113 53	
1,351 93	687 50	454 44	209 99	534 21	Prince Edward.
767 42	189 50	571 82	6 10	698 27	
1,517 07	600 00	.....	917 07	1,502 07	
2,276 82	1,845 06	.....	431 76	1,580 62	Rainy River.
938 54	700 00	.....	238 54	938 54	
2,941 37	809 32	555 18	1,576 87	1,818 76	Renfrew.
1,127 75	460 70	636 10	30 95	1,126 31	
1,516 55	600 00	.....	916 55	1,391 25	
3,696 66	1,142 00	595 23	1,959 43	1,114 29	Simcoe.
2,130 00	993 95	1,031 00	105 05	2,081 25	
3,731 00	500 00	.....	3,231 00	2,944 50	
3,139 41	900 15	940 82	1,298 44	1,922 65	Stormont, Dundas & Glengarry
1,064 58	436 44	557 93	70 21	1,035 43	
2,168 95	750 00	.....	1,418 95	1,968 00	
3,121 83	1,946 29	.....	1,175 54	1,894 32	Thunder Bay.
649 46	636 36	.....	13 10	466 12	
1,938 25	600 00	.....	1,333 25	1,769 23	

TABLE No. 1.

Officer.	Area in acres.	Population.	Officer.
Victoria	834,548	32,991	Sheriff Crown Attorney and Clerk of the Peace Local Registrar
Waterloo	305,250	50,464	Sheriff Crown Attorney and Clerk of the Peace Local Registrar
Welland	228,946	30,631	Sheriff Crown Attorney and Clerk of the Peace Local Registrar
Wellington	670,300	59,371	Sheriff Crown Attorney and Clerk of the Peace Local Registrar
Wentworth	272,190	77,114	Sheriff Crown Attorney and Clerk of the Peace Deputy Clerk of the Crown
York	540,271	63,892	Sheriff County Attorney Clerk of the Peace
Toronto		181,209	Sheriff County Crown Attorney
Total			

—*Concluded.*

Gross earnings in 1893.	Amount paid by Government.	Amount paid by county.	Amount paid by parties served.	Net income after payment of expenses.	County
$ c.	$ c.	$ c.	$ c.	$ c.	
2,147 74	601 09	639 16	907 49	1,850 05	Victoria.
1,242 57	405 90	836 67	.....	1,247 98	
2,221 15	675 00	.....	1,546 15	2,023 09	
2,149 69	1,141 25	490 14	518 30	1,506 17	Waterloo.
1,606 30	568 40	1,022 80	15 10	1,387 50	
1,679 30	1,075 00	.....	604 30	1,579 30	
2,216 55	668 10	620 45	928 00	1,636 79	Welland.
1,683 86	667 45	974 10	42 31	1,621 66	
2,306 15	600 00	....	1,706 15	1,892 09	
2,474 58	914 20	493 87	1,066 51	783 69	Wellington.
3,807 74	1,270 95	2,315 29	221 50	2,609 31	
817 31	427 00	....	390 31	802 95	
4,784 14	2,365 20	460 48	1,958 46	2,257 86	Wentworth.
2,201 84	1,346 35	705 44	150 05	1,951 84	
4,279 35	500 00	.....	3,779 35	3,377 07	
7,914 88	3,795 85	653 35	3,465 68	4,269 50	York.
2,624 50	2,453 66	123 34	47 50	2,143 79	
3,682 90	1,312 10	2,087 90	282 90	2,466 80	
16,769 75	502 89	2,853 17	13,413 69	7,352 06	Toronto.
3,514 00	3,489 00	.....	25 00	3,688 65	
301,312 68	107,205 18	55,965 55	138,141 95	213,197 83	Total.

TABLE No. II.

County.	Population.	Sheriff (net).	County attorney and clerk of the peace.	Local registrar.	Deputy clerk of the Crown.	Registrar of Deeds.	Remarks.
		$ c.	$ c.	$ c.	$ c.	$ c.	
Prince Edward	18,819	534 21	698 27	1,502 07	.....	819 05	The figures are all the net salaries.
Muskoka	17,651	1,335 40	1,240 47	735 92	.....	1,576 60	
Parry Sound	19,167	1,155 11	.....	945 41	.....	1,169 17	
Halton	21,982	1,058 81	1,637 99	1,320 10	.....	1,189 44	
Dufferin	22,311	1,291 14	552 48	1,675 15	.....	2,089 48	
Haldimand	23,430	957 86	1,483 20	1,573 40	.....	1,097 45	
Lennox and Addington	24,750	364 06	510 59	1,629 04	.....	1,150 15	
Peel	24,871	744 17	1,184 99	1,885 01	.....	1,169 17	
Algoma	26,627	1,062 30	1,412 21	1,198 33	.....	1,742 89	
Lincoln	30,079	1,728 00	1,615 98	.....	1,817 25	2,716 32	
Welland	30,631	1,636 79	1,621 66	1,892 09	.....	3,382 71	
Norfolk	30,992	1,053 95	1,312 36	2,144 38	.....	1,967 84	
Victoria	32,991	1,850 05	1,247 98	2,023 09	.....	2,135 26	
Peterborough	34,597	1,189 15	1,242 38	2,200 16	.....	2,506 69	
Lanark, N	37,725	901 30	918 87	1,509 98	.....	952 54	$2,077 84
Lanark, S	.....	.....	.....	.....	.....	1,125 30	
Brant	36,445	1,718 71	1,533 16	1,877 27	.....	2,101 75	
Prescott	42,462	1,106 56	1,137 03	1,113 53	.....	1,320 00	2,338 50
Russell	.....	.....	.....	.....	.....	1,018 50	
Elgin	43,377	1,165 51	2,083 47	.....	2,287 17	3,094 56	
Ontario	45,355	1,209 80	1,395 82	2,267 82	.....	2,404 52	
Renfrew	46,976	1,818 76	1,126 31	1,391 25	.....	2,483 55	
Frontenac	47,009	1,513 24	875 35	1,658 79	.....	1,638 68	2,195 72
Kingston	.....	.....	.....	.....	.....	557 04	
Oxford	49,849	1,788 37	1,258 49	2,740 38	.....	3,031 94	
Waterloo	50,461	1,506 17	1,247 98	1,579 30	.....	1,957 85	
Perth, N	51,716	1,218 47	886 65	1,987 55	.....	1,808 70	2,676 50
Perth, S	.....	.....	.....	.....	.....	867 80	
Essex	55,340	1,421 14	910 91	.....	1,355 21	3,075 36	
Lambton	58,810	1,370 65	1,776 25	2,573 78	.....	2,143 01	
Kent	58,819	2,906 97	2,821 24	.....	2,136 38	2,329 09	
Hastings	59,084	1,538 96	1,725 12	.....	2,773 65	2,381 09	
Wellington, N	59,371	783 69	2,609 31	802 95	.....	2,127 25	4,236 95
Wellington, S. & C	.....	.....	.....	.....	.....	2,109 70	

TABLE No. II.—*Concluded.*

County.	Population.	Sheriff (net).	County attorney and clerk of the peace.	Local registrar.	Deputy clerk of the Crown.	Registrar of deeds.	Remarks.
		$ c.	$ c.	$ c.	$ c.	$ c.	
Grenville	61,338	2,096 31	906 91	2,658 83	.....	890 60	$2,811 49
Leeds	.....	.....	.....	.....	.....	1,920 89	
York, E. & W.	63,982	4,269 50	C'y att. 2,143 79	Cl'k of p. 2,466 80	.....	1,007 98	2,245 48
York, N	.....	.....	.....	.....	.....	1,237 50	
Bruce	64,603	1,504 39	2,641 19	.....	1,935 45	2,838 07	
Huron	66,781	1,181 76	1,067 10	.....	2,293 99	2,194 78	
Stormont, Dundas and Glengarry	69,735	1,922 65	1,035 43	1,968 00	.....	.....	
Dundas	.....	.....	.....	.....	.....	816 05	2,829 50
Glengarry	.....	.....	.....	.....	.....	1,040 85	
Stormont	.....	.....	.....	.....	.....	972 60	
Northumberland and Durham	70,462	1,447 42	1,405 26	2,480 76	.....	.....	3,126 20
Northumberland, E.	.....	.....	.....	.....	.....	969 00	
Northumberland, W.	.....	.....	.....	.....	.....	787 09	
Durham, E.	.....	.....	.....	.....	.....	715 50	
Durham, W.	.....	.....	.....	.....	.....	654 70	
Grey, N.	71,214	1,827 72	596 26	2,933 40	.....	2,554 33	4,475 93
Grey, S.	.....	.....	.....	.....	.....	1,921 60	
Wentworth	77,114	2,257 86	1,951 84	.....	3,377 07	3,436 73	
Carleton	77,630	2,580 54	1,525 32	.....	3,272 10	2,345 38	5,217 45
Ottawa	.....	.....	.....	.....	.....	2,872 07	
Simcoe	82,727	1,114 29	2,081 25	.....	2,944 50	2,432 90	6,572 33
Middlesex, N. & E.	92,344	1,823 65	1,129 61	.....	3,405 80	2,836 33	
Middlesex, W.	.....	.....	.....	.....	.....	1,490 00	
London	.....	.....	.....	.....	.....	2,246 00	
Toronto, E	181,209	7,532 06	C'y att. 3,688 65	.....	.....	3,103 24	6,542 29
Toronto, W	.....	.....	.....	.....	.....	3,439 05	
Thunder Bay	.....	1,894 32	466 12	1,769 23	.....	1,048 20	
Rainy River	.....	1,580 62	.....	938 54	.....	622 35	
Haliburton	.....	.....	.....	.....	.....	501 06	
Manitoulin	.....	.....	.....	.....	.....	516 00	
Nipissing	.....	.....	.....	.....	.....	741 20	

40. For purposes of comparison the commissioners would call attention to the late changes in the registration law in Quebec and New Brunswick:

By the Act of 1894 (57 Vict. c. 41) Quebec has classified the registration divisions. In the first class are Hochelaga and Jacques Cartier, Montreal East and Montreal West; in the second, Quebec, and in the third, all subdivisions as may be brought within the statute by proclamation.

The salary attached to the first class is $3,500, to the second, $3,000, and to the third, $1,000 to $2,000.

If the average gross revenue of the first and second classes increases by fifteen per cent. for three consecutive years, $500 increase of salary is allowed, but if the gross increase in any of the first-class offices has not for three years reached $5,000 it shall fall into the second class, and the salary shall be reduced to $3,000.

Hochelaga and Jacques Cartier form a joint-office with a population of 94,830. The city of Montreal has a population of 182,695, and is divided into two offices, east and west, for registration purposes. The population of Quebec city is 63,000, and county is 19,503—in all 82,593.

41. In New Brunswick, by the Act of 1894 (c. 20), registrars were to collect all fees and retain for themselves up to the amount mentioned in the Act: the rest is turned over to the county treasurer of each county.

Applying the figures given in the census of 1891 to the figures in the statute this results:

Population.		County.	Fees to be taken by registrar.
City.	County.		
1. 24,184	25,390	1. St. John	$2,750
	41,477	2. Westmoreland	2,000
	30,979	3. York	2,000
	22,259	4. Carleton	1,750
	23,087	5. Kings	1,500
	23,752	6. Charlotte	1,500
	12,152	7. Queen's	1,000
	18,217	8. Victoria	1,000
9	25,713	9. Northumberland	1,000
		10. Madawaska	1,000
11.	23,845	11. Kent	800
12.	10,971	12. Albert	800
13.	24,897	13. Gloucester	800
14.	8,303	14. Restagouche	600
15.	5,762	15. Sudbury	600

42. Having regard to the Ontario tables it is to be observed that the net amounts received by clerks of the court to their own use (*i.e.*, local registrar and deputy clerks of Crown) are as a rule much larger than the amounts received by the sheriffs. Registrars of deeds also, as a rule, receive more than sheriffs, although in gradation of official position and responsibility sheriffs rank above registrars. While both sheriffs and registrars are gravely responsible for errors and mistakes, the clerks of the courts are practically free from such responsibility.

44. These circumstances of inequality suggest as a practical solution, the placing of clerks of the court on a scale of limited fees; if not now, as and when each office becomes vacant by death or otherwise, grading, it may be, according to population.

43. It would also be in the interests of good administration to consolidate as far as possible the clerkships outside of the county of York; that is to have as a rule the offices of deputy clerk of the Crown, deputy registrar, county court clerk and surrogate registrar held by one and the same incumbent, under the graded and limited scale of compensation suggested, in some such way as this (taking population only as one factor in the table of illustration):

In counties under a population of:

20,000	to take to his own use up to		$1,000
30,000	"	"	1,250
40,000	"	"	1,500
60,000	"	"	1,750
80,000	"	"	2,000

and all over 80,000 to collect up to $2,500.

In each case the surplus to be dealt with as advised by the Provincial Government.

When the volume of business requires it, an assistant or other help to be allowed, not exceeding a certain amount, to be fixed by the inspector.

45. As a consequence of such consolidation of offices it would follow that the office of local master, (except in a few large places), should be attached to the office of county judge with some increase of compensation, having regard to the compensation already enjoyed by this officer as surrogate judge.

46. Again, looking at the Ontario tables and comparing the figures of receipts by the different officers, it would appear that the sheriff, the most important of all the administrative officers in question, is as a rule underpaid. If salaries are to be given the sheriffs as a class should receive a larger salary than would be represented by their present receipt of fees. The exceptions where the fees appear not to be inadequate are the Sheriff of York, who in 1893 received $4,269 net out of a county with a population of 63,982, and the Sheriff of Toronto, who received in 1893 $7,532 out of a city containing 181,209, which is at the headquarters of the province, where the heaviest and most expensive litigation has become centralized. The provisions of the Act of 1894 (which become operative in 1895), will materially cut down the receipts of the sheriffs among other officers, so that taking the amounts of $4,269 and $7,532, and applying the statutory percentages which will hereafter be turned over to the Government, it would reduce their amounts, respectively, to $3,584 and $5,216.

47. In the case of registrars it may be well, (if the system remains as it is), that there should be a maximum amount fixed, beyond which the whole surplus should be turned over to public or municipal use. Thus, (taking population only as a factor for the sake of illustration), in counties having under 20,000 inhabitants the maximum should be $1,500. In counties under 30,000 the maximum should be $1,800. In counties under 40,000 the maximum should be $2,100. Under 60,000 the maximum to be $2,400; under 80,000 the maximum to be $2,700; and over 80,000 the maximum to be $3,000, and so *mutatis mutandis* as to cities.

48. Particular attention is needed in offices where the duties are such as to require deputies, assistants or clerical help. There is a great diversity at present in the amount of outlay in this direction when the same offices in different counties are compared. The whole official system should in this regard be systematized; all arrears of work (if any) should be overtaken by special effort and then sufficient clerical force provided to prevent any future accumulation of

arrears. There should be a tolerably uniform scale of compensation allowed for this, so much for deputy officers, and so much for under clerks or writers. That is to say, a fixed sum per year where the additional person is to be a permanent clerk, and so much in bulk sum for occasional work.

Provisions of this kind are common in the Legislature of the different States of the Union, and while the choice of persons is left, as it should be, in the hands of the chief or head officer; the amount which should be paid is restricted by the paramount power.

49. So in the Lower Canadian judicial system each of the chief officers is to appoint a deputy, for whose conduct he is responsible, and each chief officer shall have a sufficient number of clerks for the performance of the duties of his office, to each of whom, as well as to the deputies, a reasonable compensation may be granted, subject to the previous approval of the Governor. Con. Stat. L. C., c. 98, s. 13.

And in the late organization of registry offices in Quebec it is provided that the Lieutenant-Governor is to fix the salary of the deputy and other necessary employees, not in any case to exceed $2,500, while for necessary contingencies an additional sum will be allowed. 57 Vict., c. 41, (1894) Quebec paragraph 5650-1.

Summary of Results.

50. 1. No change should be made in appointing the officers by handing over the choice to local authorities.

2. The fee system should be continued as to all ministerial offices, *e. g.*, registrar of deeds, clerks, and registrars of courts, sheriffs, and bailiffs.

3. Salaries should be paid to all judicial or quasi-judicial officers, *e. g.*, local masters, county attorneys, and (for convenience) clerks of the peace (as a conjoint office.)

4. The expenses connected with clerical and other assistance in the offices should be systematized so that uniformity and not diversity may characterize the service.

5. A limit should be placed upon the receipts or fee-paid officers to be fixed by the Legislature, having regard to the just means between scanty and excessive compensation.

51. 6. These results are responsive to all the matters with which the commissioners are directly charged; incidental suggestions have been made on germane or collateral subjects in the course of the report which are not here specifically enumerated.

J. A. Boyd,
J. B. Robinson,
John I. Hobson,
Thomas Brooks,
J. J. Mason.

Osgoode Hall,
Toronto,
March, 1895.

SPECIAL APPENDIX.

Some of the commissioners visited several States of the American Union, and from a personal conversation with men of affairs gained a more effective insight into the working of the various offices than could be obtained in any other manner. The results of this investigation, though generally made use of in the report, may be here succinctly stated, as to some salient points. In every state almost all the public officers are elected by the people.

The sheriffs, registrars, etc., are placed upon a general list or ticket, having first been nominated and chosen by a primary caucus of either Republicans or Democrats, and afterwards this whole ticket or list of names is presented by the respective political parties to the general or popular vote.

This ticket, as there are many offices to be filled, contains, or is composed of, many names, some of which are of prominent state officers of political importance, so much greater than those of sheriffs or registrars (who are equally on the list, but are only regarded as county officers), that it is mentioned as a fault in this system that candidates for the above offices do not receive that attention or enquiry from the voters as to their fitness for office, which their prominence (with us in Canada) is thought to deserve. These minor offices are in fact lost sight of in the great political issues involved in the election of higher state officers.

Upon the ticket for election generally appears the names of the Governors and Lieutenant-Governors, judges of the Supreme and Circuit Courts, clerks of the courts, Secretary of the State, Treasurer of the State, Superintendent of Public Instruction, prosecuting officer or county attorney, sheriffs, auditors, registrars, constables, etc., etc.

They are in fact all political candidates from the Governor downwards, and as such nominated on this political ticket, and succeed or fail of success according to the strength of either great party in the state.

It does occur now and then that one or more of the judges, as well as other officers of the state (and sometimes some of the county officers), are, owing to their proved capacity, efficiency and popular qualities, re-elected, at times too by an understanding of both political parties.

The Commissioners had the pleasure of being introduced to one of the judges in Cincinnati, who had been chosen for five terms.

This, however, was spoken of as a rare occurrence, party politics generally governing the vote for every officer nominated for election on the party's ticket.

The Commissioners found it to be the case, that be the candidates who they may, or for what office nominated, they are assessed for contribution or payment to the party's political fund, and are afterwards, as a general thing, during their term of office, annually taxed to keep up the strength and future success of the party on whose ticket they have been elected, and that they all go out of office at the end of the term for which they are chosen.

Gentlemen of long experience and residence in the several states and cities visited, and who had given close attention to this system of popular election, as applied to sheriffs, registrars, county attorneys, clerks, etc., etc., candidly confessed that it had proved a failure—did not elect the best men—that their qualification for office had little to do with the people's vote who knew but little about them, or had any opportunity of knowing—that popular election so applied to these officers was an admitted evil which they would gladly get rid of if they could, but that the principle of choosing every officer connected with the government of the state having been given to the people, it was next to impossible now to change it.

As all persons elected for office by universal suffrage, from the governor to the constable, hold their office by the same authority, and are in reality responsible only during their term to the people or party who elected them, no inspection or supervision of their offices takes place. Nominally there are in some states commissioners, whose duty it is to control or inspect, but all being subject to popular election, this power is, under the circumstances, as may be supposed, and as the Commissioners found, not practically or too severely exercised.

The Commissioners found it also universally admitted that every officer, be he governor or registrar, thus elected by universal suffrage is greatly engaged during his term in pulling every wire he knows of, in order to secure re-election by the people.

Respecting the remuneration of sheriffs, registrars, etc., etc., the Commissioners found that in many instances no return is given, neither are the public aware of the exact amount of fees received by the respective officers. In one important county in one state the sheriff was said by some to receive fifteen thousand dollars, by others twenty and twenty-five thousand.

This officer, who is generally Master of the Jail and House of Correction, is permitted to make a large income from prisoners and others, of which he gives, as is supposed, rather a slim return, but as he is elected by his party, who for the time are dominant in the state, his return of fees is not too strictly criticised. An agitation is being pressed in some important counties to change this mode of remunerating these officers, attended, however, with difficulties hard to surmount.

The Commissioners were fortunate in meeting Canadians in every state visited, many of them of long residence and experience in business affairs, and who had from their previous knowledge of Canada an excellent opportunity of judging between the American and Canadian systems—that is, as between appointments made by the executive or Government in Ontario, and appointments made by universal suffrage in the states. They were unanimously in favor of the former.

On the whole aspect and view of the position election and payment of the above mentioned officers, which a short visit to several of the states enabled them to make, the Commissioners are of opinion that the mode adopted in the Province of Ontario of having appointments made by the Government is in every way better calculated to secure good men to fill the respective offices, and could not advise a change in the direction of a popular vote. This conclusion is also in accordance with the great mass of the testimony obtained by them in Ontario.

Massachusetts.

The administrative system as developed in Massachusetts presents many points of variation and contrast as compared with ours in the particulars now under consideration. The only officer charged with responsibility similar to ours is the sheriff. The recorder of deeds is merely a recording officer and does not furnish abstracts of title; that is a distinct branch of business, not in official hands. The fee system is in form limited to the office of recorder of deeds, but it prevails in substance in the sheriff's office as will be presently explained.

The recorder of deeds in Suffolk County (which contains Boston) has a large staff of clerks and assistants all appointed and paid by him. After payment of all expenses the balance of fees received by him last year (1893) was $4,300. He has certain other perquisities of office which may be taken at $1,500 more.

Deeds and wills affecting lands are recorded in different offices: the former by the recorder, and the latter by the registrar of probate. This last officer is

elected by the people, but his salary is paid by the state, ($5,000 in Suffolk County.) No responsibility devolves upon either registrar or recorder in respect of abstracts of title such as obtains in the case of Ontario registrars of deeds.

The sheriff is also master of the houses of correction, (jails), and as such has a salary of (generally) $1,000, with right of maintenance and residence in connection with the prison. He gets a further salary fixed by the state as sheriff, (in Suffolk County $3,000), but the whole executive work is done by a suitable staff of deputies. In Boston he has six deputies who serve process and enforce executions, etc., for which they collect fees as in our system. These fees they divide equally amongst themselves and the aggregate is about $4,000 per year to each. They give bonds to the sheriff so as to secure him against loss on account of their action or inaction, and thus though the sheriff is primarily responsible he has the right of recourse to his deputies. He has also (in Boston) four officers to attend each jury court—five of which courts are sitting concurrently most of the year. These court officers receive a salary of $1,700 each per year. No per diem charge for attending court is permitted. The sheriff has the right to appoint all his deputies and other officers.

In the counties the clerk of court is a county officer for the Supreme Court and Superior Court of the state, and also clerk of the county commissioners. In Norfolk County he gets a fixed salary of $2,800, has one permanent clerk, $1,500, and occasional help for copying, etc., not exceeding $600 for the year.

The smaller courts—district, municipal or justices—have their own separate clerks paid by a salary fixed by the legislature.

For purposes of criminal law the state is grouped into (8) districts, each of which elects its own district attorney for three years. The salaries are fixed by statute ranging from $1,350 to $4,500, and are paid out of the county treasuries

New York.

In this state the trend of affairs has been to change from payment by fees into payment by salaries. This was brought about because of the excessive fees received in urban localities. Sheriffs are paid now a sum by way of salary, and also by the receipt of fees, and the result is that the aggregate receipts are larger than when only fees were collected. Recorders of deeds are paid salaries, and the result is that instead of there being, as was expected, a surplus for the county there is a shortage of fees to meet the salaries and expenses. The official being paid a salary makes no exertion to overtake extra work, and calls for an increase of the staff in order to keep up with the work.

There is no principle guiding the scale of salaries, or even in the methods of the different counties of the state; each has its own way of doing things and its own rate of payment for services, and the whole is a perfect chaos. Each county is specially legislated for and such rates of salary are imposed as the people can be brought to pay, and one is not guided by another. The method of electing officials having been conceded it cannot be withdrawn, however desirable in many cases a change might be; and in this connection one prominent man quoted Disraeli, "Democracy is like the grave—it takes all, but it restores nothing."

New Jersey.

This state stands upon the old ways, unmoved in the midst of change. All officers are paid by fees, no accounts are kept and no returns are required. No

movement has arisen to place any of the officers on fixed salaries, save one abortive attempt to do so. This was with reference to the Clerk of Chancery, and of another court, who were supposed to get over $20,000 yearly in fees; but the statute was so framed as to defeat its apparent intention. Prosecuting attorneys and court clerks are appointive officers, all the rest are elective.

The county clerk is clerk of all the higher courts, and of the county and quarter sessions courts, and is also recorder of deeds. The officers choose their own assistants and pay as they think best out of the fees. Three thousand dollars would be thought a very reasonable salary for the sheriff of a county with 100,000 population, and from $3,000 to $5,000 as a net amount for the county clerk and recorder. There is some agitation to have the judges elective. They are now appointed by the governor with consent of the Senate.

Pennsylvania.

In this state counties over 100,000 inhabitants pay the county officials by fixed salaries with certain perquisites. Under 100,000 the officials are paid by fees, and it is roughly estimated that the returns will range from $2,000 to $2,500 a year from all sources. There is little doubt, however, that these are minimum figures. For Philadelphia the registrar of wills has a salary of $10,000 and he also receives percentages on the collection of delinquent taxes, which run from $30,000 to $35,000 more into his pocket.

The recorder of deeds is paid a salary of $10,000 and has small percentages to about $600 besides. He can choose and dismiss the members of his staff, amounting to about 90 in all; they are paid salaries averaging over $1,000 each. Of surplus fees collected, about one-fifth goes to the state and the other four-fifths to the county (which is the City of Philadelphia.)

The sheriff of the city gets the largest salary, $15,000, as he is the most responsible officer. He has various deputies, one in the land department who is paid $6,000 a year. His process server gets $60 a month. The county fixes the salaries while the sheriff chooses his own assistants. All fees are paid into the county treasury, and last year there was a surplus of $50,000 over the expenses. The mayor gets a salary of $12,000, and has an immense patronage, (it is said), of about 10,000 places to fill in the city government.

Clerks of courts generally are elected by the people, but the prothonotary in Philadelphia, the chief registering clerk of the Court of Common Pleas is now appointed by the judges of the four Courts of Common Pleas for a term of three years at $10,000 a year. The change from election to appointment was made in 1873. In a book published under the auspices of the University of Pennsylvania it is said "when the prothonotary was elected by the people inasmuch as he owed his position largely to party strategy, and was responsible to no one but himself, the administration of the office was lax and corrupt. It was wont to be matter of notorious comment that the office was used to recoup the coffers of the regnant political party. The system of empowering the judges of the court to appoint was advocated and adopted principally in order that he might be made responsible to a tribunal that could easily pass judgment on his efficiency and remove him from office if he were corrupt or incompetent."—"City Government of Philadelphia" (1893), p. 274.

City of Washington and District of Columbia.

The Commissioners having visited and reported upon the system prevailing in several cities and states where the elective principle prevails and all officers of the state are subjected to and appointed by a popular vote, thought it advisable

in the interest of further information to visit the district of Columbia and the city of Washington where alone in all the States, if not alone on this continent, another mode of appointment both for governmental and municipal affairs prevails, and where this mode has now been in successful operation for more than twenty years.

In this district and city containing, it is said, two hundred and seventy thousand people, a unique and exceptional method of government exists.

The President of the States, subject to the approval of the National Congress, has absolute control of all affairs both govermental and municipal, exercising exclusive control in all cases.

The constitution of the United States gave to Congress power to exercise exclusive legislation in all matters whatsoever over a district not exceeding ten miles square, as might by cession of particular states and the acceptance of Congress become the seat of the government of the United States. This power was conferred upon Congress for its own protection, and so that the executive and legislative functions of government could be carried on without molestation or fear from any cause or source whatever.

The chief reason for this provision was, that in 1783 Congress was compelled to leave Philadelphia by the approach of a body of the dissatisfied soldiers of the revolution, and as the city and state authorities acknowledged their inability to afford the necessary protection, the framers of the constitution saw the necessity for giving to Congress absolute control of the future capital, wherever it might be located.

It is interesting to state that the National Capital came to be located where it is after a contest of seven years in Congress, and the consideration of no less than twenty-two sites in several different states, and the passage by one House of a Bill for a dual capital with a provision that Congress should meet alternately at the two places. It was finally by a compromise located in Washington, in July, 1790.

The Act authorized President Washington to appoint three commissioners to lay out and define the boundaries of the district and to lay out the city on such plan as he might see fit.

Certain owners of land deeded portions of their properties "For a Federal city, with such streets, squares, parcels and lots as the President for the time being might approve." All lands taken for streets, avenues and alleys, were a free gift to the United States Government, lands selected for public reservations, for public buildings, parks, etc., were paid for, the balance of the land accepted and taken was laid out into squares and lots, to be divided equally between the original proprietors and the Government.

From the lots thus donated to the Government, it would appear that the ground upon which the capital, the executive mansion, and all the original departmental buildings stand, did not cost the Government a farthing, that the Government has paid nothing for either their public lots or for their property in the streets, now owning them without the expenditure of a dollar.

While the general Government was given absolute control, it was understood at first and was acted upon up to 1871, as far as purely local matters were concerned, municipal government as originally established in Alexandria should prevail, and a mayor and board of aldermen and council for the city of Washington controlled the municipal government.

In that year this system was changed by the creation of a Board of Public Works, a Board of Health, Governor, Secretary and Treasurer, all of whom

were appointed by the President and confirmed by the Senate, the general Government thus resuming direct control of local affairs. Congress, however, deemed it advisable to change this form of government, and in 1874 provided for the appointment of three commissioners to clear up and complete all matters created by the above Boards, etc.

The Municipal Government now consists of two civilian commissioners appointed by the President and confirmed by the Senate, and one Army Engineer Officer detailed by the Secretary of War, the three constituting a Board of Commissioners for three years. They appoint all subordinate officials and clerks, including the Board of School Trustees.

The Government owns almost half of the real estate of the city, including in the Government's share all the many parks, public grounds (those of the capital and presidential mansion included) the botanical gardens, etc., etc., hence the tax is divided, each, that is Government and people, paying half. Occasionally disputes have occurred as to the fair or proper division ; now, however, that arbitration has determined these disputes no dissatisfaction is expressed.

Each of the commissioners receives a salary of five thousand dollars a year. They appoint an attorney for the municipality of the District of Columbia at a salary of four thousand dollars, an assistant attorney at two thousand dollars, special assistant attorney at sixteen hundred dollars, and a law clerk at twelve hundred dollars per annum.

The Recorder of Deeds is appointed by the President and receives four thousand dollars per annum. In his office are a deputy recorder at eighteen hundred, two clerks at twelve hundred each, and one at seven hundred and eighty, besides a janitor.

The Register of Wills is also appointed by the President. His salary is three thousand six hundred dollars. There is also a deputy at fifteen hundred, two clerks at nine hundred each, one at eight hundred and forty, one at six hundred, and temporary clerks at two dollars per day, and messenger at three hundred and sixty.

The fees in this office amount to eleven thousand three hundred and forty dollars, and are sufficient to pay the salaries and expenses, which for the fiscal year ending 30th June, 1894, were ten thousand five hundred and eighty-five dollars.

There is also a United States District Attorney, who is appointed by the President and paid by fees. The amount of his income could not be ascertained, but is estimated from ten to twelve thousand dollars per annum. There are in his office four Assistant United States District Attorneys at the respective salaries of three thousand, two at two thousand one hundred and fifty, and one at twelve hundred and fifty dollars per annum, paid from fees received in the different courts.

The amount paid United States Marshall and his assistants in the District is eight thousand dollars. He is appointed by the President and nominates his own assistants.

There are no officers of any kind elected in the District of Columbia including the City of Washington. The residents in the District have no votes for any purpose.

From enquiry made and interviews had with leading citizens of all shades of politics, including resident Canadians, there was no desire expressed for any change

from the present system of Government appointment of these commissioners to appointment by a popular vote. Economy is secured, the accounts of the commissioners being examined by Federal Auditors, no useless offices created, and the Government carried on without any suspicion of bribery or corruption in any department. One prominent gentleman expressed what he said was the almost unanimous opinion, "That this is the only city in the United States whose government is not honey-combed with corruption."

The Commissioners can not close their Report without heartily acknowledging the many acts of courtesy received, and ready information kindly and promptly given by every gentleman in the United States to whom they had letters of introduction, or to whom they introduced themselves with the view of obtaining a knowledge of the matters submitted to them.

Table of Statistics, 1894.

The following table from the official returns for 1894 could not be prepared in time for use in compiling the report, but is inserted here for purposes of comparison and to illustrate the effect of existing legislation:

TABLE

referred to in the report showing the amounts received by officers therein named for 1894, and the sources from which such amounts were received, with a column added to illustrate how much will be payable for public use from similar receipts when the legislation of 1894 (57 Vic., cap. 9) takes effect.

County.	Area in acres.	Population.	Officer.
Algoma	27,604,480	26,627	Sheriff County Attorney and Clerk of the Peace Local Registrar
Brant	223,215	36,445	Sheriff County Attorney and Clerk of the Peace Local Registrar
Bruce	760,836	64,603	Sheriff County Attorney and Clerk of the Peace Deputy Registrar Deputy Clerk of the Crown
Carleton	565,815	77,630	Sheriff County Attorney and Clerk of the Peace Deputy Registrar Deputy Clerk of the Crown
Dufferin	315,624	22,311	Sheriff County Attorney and Clerk of the Peace Local Registrar
Elgin	441,896	43,377	Sheriff County Attorney and Clerk of the Peace Local Registrar
Essex	422,946	55,340	Sheriff County Attorney and Clerk of the Peace Deputy Registrar Deputy Clerk of the Crown
Frontenac	662,312	47,009	Sheriff County Attorney and Clerk of the Peace Local Registrar
Grey	1,097,350	71,214	Sheriff County Attorney and Clerk of the Peace Local Registrar
Haldimand	279,596	23,440	Sheriff County Attorney and Clerk of the Peace Local Registrar
Halton	223,930	21,982	Sheriff County Attorney and Clerk of the Peace Local Registrar
Hastings	885,411	59,084	Sheriff County Attorney and Clerk of the Peace Deputy Registrar Deputy Clerk of the Crown
Huron	795,829	66,781	Sheriff County Attorney and Clerk of the Peace Deputy Registrar Deputy Clerk of the Crown
Kent	82,063	58,019	Sheriff County Attorney and Clerk of the Peace Deputy Registrar Deputy Clerk of the Crown
Lambton	965,902	58,810	Sheriff County Attorney and Clerk of the Peace Local Registrar

Local Registrar and Deputy Clerk of Crown unless otherwise

Gross earnings in 1894.	Salary.	Amount paid by Government.	Amount paid by county.	Amount paid by parties served.	Net income after payment of expenses, including sums received for earnings in previous year.	Amount that would be payable to Government under 57 Vict.
$ c.	$ c.	$ c.	$ c.	$ c.	$ c.	$ c.
1,521 00	1,000 00	941 44	.....	579 56	1,193 27	....
684 47	500 00	674 47	.....	10 00	1,153 71	.....
565 32	750 00	.....	.....	565 32	1,278 82	.....
2,882 38	.....	1,548 38	406 52	927 48	1,930 34	.....
1,403 20	....	514 60	888 60	.....	1,326 70	.....
1,809 16	675 00	.....	.....	1,809 16	1,631 96	13 19
3,246 38	.....	1,217 42	586 58	1,442 38	1,746 69	.....
2,334 86	....	996 95	1,306 27	31 64	2,101 45	10 14
170 50	Commuted	... ...	.....	170 50	Commuted	.....
2,629 44	450 00	.....	.....	2,629 44	2,339 44	117 88
4,433 52	. .....	1,158 75	620 41	2,654 36	2,699 48	89 89
2,015 75	....	779 84	1,006 23	229 68	995 17	.....
481 10	.....	.....	.....	481 10	424 64	.....
3,317 60	450 00	....	.....	3,317 60	2,718 65	215 59
1,621 21	....	529 07	370 93	721 21	1,243 95	.....
647 63	....	254 36	356 27	37 00	522 63	.....
1,001 90	675 00	.....	.....	1,001 90	1,574 05	7 40
2,598 38	.....	1,356 77	396 24	845 37	1,735 89	.....
1,776 24	.....	1,071 17	539 47	165 60	1,420 15	....
2,382 50	675 00	. .....	. .. .	2,382 50	2,737 70	221 31
3,811 36	....	2,391 60	540 45	879 31	2,312 09	31 20
1,551 94	.....	773 54	549 59	228 81	846 69	.....
352 90	.....	....	.....	352 90	381 30	.....
2,420 82	450 00	....	.....	2,420 82	2,304 11	110 82
1,558 93	100 00	695 86	510 78	352 29	1,219 55	.....
1,211 99	.....	346 00	865 99	.....	1,012 29	.....
1,590 91	675 00	....	.....	1,590 91	1,559 39	5 93
2,802 66	.....	1,063 00	699 25	1,040 41	1,596 42	....
1,321 15	.....	389 60	926 80	4 75	965 68	.....
2,177 85	750 00	... .	....	2,177 85	2,630 48	189 14
1,707 10	100 00	803 79	345 91	557 40	1,373 05	.....
1,602 02	. .....	646 50	869 49	86 03	1,214 46	.....
985 85	600 00	.....	.....	985 85	1,537 35	3 73
1,481 04	.....	754 84	353 06	373 14	938 63	.....
1,714 52	..... .	782 43	932 09	.....	1,684 41	.....
1,124 89	600 00	.. ..	.....	1,124 89	1,224 89	....
3,561 33	.....	935 30	662 57	1,963 46	1,502 40	.....
1,154 15	....	349 35	741 90	62 90	360 29	from 4th July.
398 30	Commuted	.....	.....	398 30	Commuted	....
3,145 02	450 00	.....	....	3,145 02	1,911 71	41 17
2,769 26	.....	933 45	493 31	1,342 50	968 18	.....
1,673 85	.....	486 30	1,162 55	25 00	1,311 30	... .
156 30	Commuted	....	....	156 30	Commuted	.....
2,699 70	500 00	.....	....	2,699 70	2,494 40	148 88
3,827 91	.....	1,010 10	699 50	2,118 31	2,417 23	41 72
3,402 30	.....	2,266 65	1,008 65	127 00	2,662 30	82 46
196 00	.....	.....	.....	196 00	Commuted	.....
2,026 16	450 00	....	....	2,026 16	1,944 91	44 49
2,859 64	.....	1,340 10	468 50	1,051 04	1,670 84	.....
2,344 03	....	1,256 37	1,052 66	35 00	2,235 05	23 50
1,910 90	675 00	.....	.....	1,910 90	2,460 90	142 18

stated includes County Court Clerk and Surrogate Registrar.

County.	Area in acres.	Population.	Officer.
Lanark	600,764	37,725	Sheriff County Attorney and Clerk of the Peace Local Registrar
Leeds and Grenville	741,451	60,888	Sheriff County Attorney and Clerk of the Peace Local Registrar
Lennox and Addington	688,496	24,750	Sheriff County Attorney and Clerk of the Peace Local Registrar
Lincoln	191,459	30,079	Sheriff County Attorney and Clerk of the Peace Deputy Registrar Deputy Clerk of the Crown
Middlesex	753,692	92,344	Sheriff County Attorney and Clerk of the Peace Deputy Registrar Deputy Clerk of the Crown
Muskoka	3,226,320	17,651	Sheriff District Crown Attorney Local Registrar
Norfolk	389,418	30,992	Sheriff County Attorney and Clerk of the Peace Local Registrar
Northumberland and Durham	808 698	70,462	Sheriff County Attorney and Clerk of the Peace Local Registrar
Ontario	488,030	45,355	Sheriff County Attorney and Clerk of the Peace Local Registaar
Oxford	470,376	49,849	Sheriff County Attorney and Clerk of the Peace Deputy Registrar Deputy Clerk of the Crown
Parry Sound	2,288,800	19,167	Sheriff Local Registrar
Peel	289,294	24,871	Sheriff County Attorney and Clerk of the Peace Local Registrar
Perth	518,007	51,716	Sheriff County Attorney and Clerk of the Peace Local Registrar
Peterborough	1,947,520	34,597	Sheriff County Attorney and Clerk of the Peace Local Registrar
Prescott and Russell	521,347	42,462	Sheriff County Attorney and Clerk of the Peace Local Registrar
Prince Edward	229,772	18,889	Sheriff County Attorney and Clerk of the Peace Local Registrar

Local Registrar and Deputy Clerk of the Crown unless otherwise

Gross earnings in 1894.	Salary.	Amount paid by Government.	Amount paid by county.	Amount paid by parties served.	Net income after payment of expenses, including sums received for earnings in previous year.	Amount that would be payable to Government under 57 Vict.
$ c.	$ c.	$ c.	$ c.	$ c.	$ c.	$ c.
1,474 27	.....	654 06	399 37	420 84	1,010 16	.....
1,090 81	.....	432 93	556 87	101 01	960 39	.....
1,956 20	675 00	.....	.....	1,956 20	1,745 88	24 58
2,928 10	.....	915 80	698 15	1,314 15	2,411 48	41 14
1,011 89	.....	415 53	586 36	10 00	902 89	.....
2,225 01	500 00	.....	.....	2,225 01	2,436 10	137 22
2,066 46	.....	533 73	363 62	1,169 11	1,138 34	.....
545 99	.....	96 18	440 13	9 68	532 93	.....
1,343 13	600 00	.....	.....	1,343 13	1,860 79	36 07
2,552 14	.....	1,018 80	618 40	914 94	1,689 24	.....
1,344 20	.....	482 00	862 20	.....	1,392 40	.....
223 27	.....	.....	.....	223 27	172 45	.....
1,542 75	450 00	.....	.....	1,542 75	1,540 40	4 04
4,005 41	.....	1,706 70	1,469 33	829 38	1,909 20	.....
3,341 88	.....	1,768 61	1,256 19	317 08	2,584 17	66 83
535 90	.....	.....	.....	535 90	535 90	.....
4,755 55	500 00	.....	.....	4,755 55	3,880 10	740 05
1,715 43	500 00	1,507 93	.....	207 50	1,421 54	.....
1,101 07	400 00	1,057 47	.....	43 60	1,407 01	.....
196 84	600 00	.....	.....	196 84	779 94	.....
2,666 21	.....	948 69	688 57	1,028 95	1,450 17	.....
1,511 56	.....	558 80	861 80	90 96	1,489 26	.....
1,547 32	675 00	.....	.....	1,547 32	1,892 62	39 26
2,929 56	.....	1,250 65	697 02	981 89	1,653 93	.....
2,200 57	.....	1,302 83	775 45	122 29	1,535 68	.....
2,802 72	750 00	.....	.....	2,802 72	2,756 04	226 81
1,916 81	.....	737 18	573 40	606 23	1,022 03	.....
1,703 79	.....	529 26	892 44	282 09	1,326 35	.....
1,845 10	675 00	.....	.....	1,845 10	2,258 00	101 60
3,109 58	.....	1,287 25	433 21	1,389 12	1,716 36	.....
1,352 01	.....	522 80	98 35	730 86	1,296 56	.....
179 99	.....	.....	.....	179 99	179 99	.....
3,010 60	450 00	.....	.....	3,010 60	2,782 70	234 81
2,302 76	500 00	1,136 59	.....	1,166 17	118 50	.....
67 42	600 00	.....	.....	67 42	667 42	.....
2,231 72	.....	1,078 98	419 84	732 90	1,016 19	.....
2,157 00	.....	1,217 48	860 59	78 93	1,811 88	.....
1,290 87	600 00	.....	.....	1,290 87	1,724 77	22 47
2,943 47	.....	1,236 40	521 75	1,185 32	1,535 61	.....
1,783 45	.....	852 38	924 57	6 50	1,382 40	.....
2,750 45	675 00	.....	.....	2,750 45	2,371 45	124 29
2,482 44	.....	853 80	490 91	1,137 73	1,477 95	.....
1,304 75	.....	726 31	516 24	62 20	1,524 02	.....
1,270 25	675 00	.....	.....	1,270 25	1,710 25	21 02
1,682 16	500 00	467 98	469 12	745 06	1,512 51	.....
1,230 94	.....	263 74	900 20	67 00	1,174 40	.....
650 57	675 00	.....	.....	650 57	983 02	.....
1,465 49	200 00	587 69	455 24	422 56	644 51	.....
801 74	.....	143 80	600 49	57 45	782 46	.....
1,251 94	600 00	.....	.....	1,251 94	1,787 94	28 79

stated includes County Court Clerk and Surrogate Registrar.

County.	Area in acres.	Population.	County.
Rainy River		7,579	Sheriff Local Registrar
Renfrew	985,504	49,976	Sheriff County Attorney and Clerk of the Peace Local Registrar
Simcoe	970,310	82,727	Sheriff County Attorney and Clerk of the Peace Deputy Registrar Deputy Clerk of the Crown
Stormont, Dundas and Glengarry.	776,863	69,735	Sheriff County Attorney and Clerk of the Peace Local Registrar Surrogate Registrar
Thunder Bay		7,650	Sheriff County Attorney and Clerk of the Peace Local Registrar
Victoria	834,548	32,991	Sheriff County Attorney and Clerk of the Peace Local Registrar
Waterloo	305,250	50,464	Sheriff County Attorney and Clerk of the Peace Local Registrar Surrogate Registrar
Welland	228,946	30,631	Sheriff County Attorney and Clerk of the Peace Local Registrar
Wellington	670,300	59,371	Sheriff County Attorney and Clerk of the Peace Local Registrar County Court Clerk Surrogate Registrar
Wentworth	272,190	77,114	Sheriff County Attorney and Clerk of the Peace Deputy Registrar Deputy Clerk of the Crown
York	540,271	63,892	Sheriff County Crown Attorney Clerk of the Peace County Court Clerk Surrogate Registrar
Toronto		181,209	Sheriff Crown Attorney
Totals			

Local Registrar and Deputy Clerk of the Crown unless otherwise

Gross earnings in 1894, exclusive of salary.	Salary.	Amount paid by Government.	Amount paid by county.	Amount paid by parties served.	Net income after payment of expenses, including sums received for earnings in previous year.	Amount that would be payable to Government under 57 Vict.
$ c.	$ c.	c.	$ c.	$ c.	$ c.	$ c.
1,241 57	1,000 00	658 05	....	583 52	1,835 27	.....
311 95	700 00	.....	.....	311 95	986 95	.....
2,672 16	.....	1,013 29	520 54	1,138 33	1,604 17	.....
1,499 85	.....	870 04	610 01	19 80	1,437 62	.....
897 81	600 00	... .	....	897 81	1,410 81	....
4,489 89	....	1,254 71	560 03	2,675 15	1,929 17	.....
2,607 26	....	1,192 18	938 85	476 23	2,435 48	43 54
276 10	....	.....	....	276 10	256 74	.....
2,872 40	500 00	.....	.....	2,872 40	2,875 08	262 52
2,837 98	.....	858 87	916 76	1,062 35	1,315 07	.....
1,143 49	....	484 65	527 18	131 66	1,075 69	.....
1,049 75	750 00	.....	.....	1,049 75	1,785 45	28 54
865 49	....	.....	.....	865 49	870 37	.....
1,454 19	1,000 00	708 00	.....	746 19	1,782 51	.....
551 03	.....	520 48	.....	30 55	564 43	.....
876 29	600 00	.....	.....	876 29	1,364 76	.. ..
2,318 22	.....	730 80	575 88	1,011 54	1,684 04	....
1,378 61	....	536 80	816 81	25 00	1,269 35	.....
1,343 88	675 00	.....	.....	1,343 88	1,907 38	40 73
2,397 41	100 00	882 11	455 34	1,059 96	1,576 02	..... .
1,909 18	....	816 25	1,004 20	88 73	1,509 18	.....
764 25	1,075 00	.....	.....	764 25	1,585 25	8 52
1,000 23	.....	.....	.....	1,000 23	600 23	.....
2,210 42	.....	871 90	697 52	641 00	1,561 29	.....
1,774 33	....	820 03	954 30	.....	1,037 95	.....
1,605 45	600 00	....	....	1,605 45	1,896 19	39 61
2,648 98	.....	834 83	626 78	1,187 37	934 35	.....
2,792 63	.....	1,081 07	1,627 56	84 00	2,261 73	26 17
324 61	500 00	.....	.....	324 61	804 83	.....
611 50	.....	.....	.....	611 50	579 00	.....
1,595 69	.....	.....	.....	1,895 69	1,323 20	.....
5,311 54	.....	2,299 05	470 40	2,542 09	2,032 54	8 25
2,154 59	.....	1,457 69	696 90	.....	2,004 59	45
841 96	.....	.....	....	841 96	Commuted.	.....
3,915 69	500 00	.....	.....	3,915 69	3,998 39	799 20
6,988 14	.....	4,333 45	666 51	1,988 18	4,015 51	557 75
3,754 17	....	3,512 01	154 66	87 50	2,790 87	108 17
4,160 61	.....	1,808 50	1,788 40	563 71	2,979 91	145 98
5,869 75	.....	.....	....	5,869 75	4,578 17	1,089 08
5,123 51	.....	.....	.....	5,123 51	3,888 38	744 19
12,474 42	... .	3,277 45	294 68	8,902 29	5,245 40	1,172 70
4,032 00	....	4,032 00	.....	.....	3,764 06	432 00
292,410 84	30,925 00 Salaries.	89,413 56 30 925 00	52,693 69	150,303 59	228,818 59	8,891 07
		120,338 56				

stated includes County Court Clerk and Surrogate Registrar.